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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~368.~~ 137 Rec'd

JOHN T. GODDARD, ADMINISTRATOR OF ROBERT G. SHEDD,
APPELLANT,

vs.

ALBERT ORDWAY.

Reverse Order of parties made

Cotto 7/14

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED APRIL 21, 1877.

Passed until after receipt of Sage vs C.R.R. 93 U.S. 412

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SUPREME COURT OF THE UNITED STATES.

No. 368.

JOHN T. GODDARD, ADMINISTRATOR OF ROBERT G. SHEDD, APPELLANT,

vs.

ALBERT ORDWAY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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745-791

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1 *Original bill of complaint.—Filed Jan'y* 4, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Equity docket, 14.

To the supreme court of the District of Columbia, holding an equity court for said District, the plaintiff complains as follows:

1. He is a resident of the town of Groton, Middlesex County, Massachusetts. The defendant is a resident of the city of Richmond in the State of Virginia.

2. On or about the 30th day of September, 1871, the plaintiff loaned to the defendant and his cousin, George F. Ordway, who were then engaged in business together under the firm name of Albert Ordway & Company, the sum of nine thousand dollars ($9,000\frac{00}{100}$), for which they gave him two promissory notes, signed by themselves and others,
2 one for $5,000.00, the other for $4,000.00, both payable in five years from that date with interest at the rate of seven per cent. per annum.

On or about the second day of October, 1871, the plaintiff loaned to the defendant and said George F. Ordway, the further sum of twenty-four thousand two hundred and sixty-eight $\frac{58}{100}$ dollars ($24,268\frac{58}{100}$), for which sum they gave him four other promissory notes signed by themselves and others, two for $7,000 each, one for $5,000, and one for $5,-$268\frac{58}{100}$, all payable in five years from that date with interest at the rate of six per cent. per annum.

On or about the 29th day of July, 1871, the plaintiff had loaned to said George F. Ordway, the sum of ten thousand dollars, and had taken his individual note for that amount payable five months after that date. When this last mentioned note matured, to wit, on or about the first day of January, 1872, the amount of money represented by it
3 was by an arrangement between the plaintiff, the defendant, and his cousin, George F. Ordway, the maker of the note, transferred to the defendant and said George F. Ordway as Albert Ordway & Company, and they thus became indebted to the plaintiff in the sum of $43,268\frac{58}{100}$. Exhibit A. hereto appended and made part hereof, contains copies of said promissory notes, numbered respectively 1, 2, 3, 4, 5, 6 and 7.

3. Said notes, except that one numbered 7, were signed by said George F. Ordway and by said Albert Ordway & Company as principals. The others, persons and firms, whose names are signed to said notes, signed them as sureties. J. M. Ordway is the wife of George F. Ordway. The firm of Ordway & Company was composed of George F. Ordway and J. M. Fellows only. The Ordway Slate Company was composed of the defendant, George F. Ordway, and two other cousins of the de-
4 fendant named Edward and Henry M. Ordway. Since said notes were signed, the plaintiff was prevailed upon by said George F. Ordway to release his wife, J. M. Ordway, as one of the sureties on said notes. This the plaintiff did in ignorance of the legal effect of the act upon the liability of the other sureties.

Furthermore, said Edward Ordway and Henry M. Ordway claim that the name of the Ordway Slate Company was signed to said notes by the defendant without their knowledge, and they aver that he had no

authority to sign the firm name to said notes. The plaintiff, while he does not admit that the defendant signed said firm name without authority, is advised by counsel that, as he has in his possession no legal evidence tending to show that said firm name was signed by the defendant with the authority of the other members of the firm, and as the transaction in connection with which said notes were signed
5 was not one relating to the business of said firm, it is exceedingly doubtful whether the plaintiff can ever recover upon said notes as against said Edward Ordway and Henry Ordway. George F. Ordway and Ordway & Company are wholly insolvent.

Substantially, the only person to whom the plaintiff can look for payment of said notes, without litigation doubtful in its results is the defendant Albert Ordway.

4. Though said notes, numbered one to six inclusive, are by their terms payable five years after date, it was understood and agreed by and between the plaintiff and said Albert Ordway & Company at the time, that they would be paid by installments from time to time as the defendant should receive moneys under the contract hereinafter referred to.

5. All the moneys loaned to said Albert Ordway & Company as
6 aforesaid, was money that had been entrusted to the plaintiff by his wife and her sister, Helen E. Phillips, and other persons to be by him invested at his discretion and upon his responsibility.

6. During the spring and summer of 1871, the defendant was engaged in negotiating the purchase of an interest in a granite quarry near Richmond, Virginia, and in endeavoring to obtain for the defendant a contract with the Government of the United States for furnishing a very large quantity of granite to be used in the construction in whole or in part of a building at or near the corner of Seventeenth street west and Pennsylvania avenue, in the city of Washington for the use of the State, War and Navy Departments.

It was represented to the plaintiff by the said Ordways that they desired to use the money he loaned them in purchasing said quarry, and in other ways preparing to carry out the contract which the defendant expected to obtain.

7 It was also represented to the plaintiff by them that the repayment of the money thus loaned would be secured by a lien upon the contract with the government. Precisely how this was to be done was not at the time arranged, but the plaintiff, who is not a lawyer, loaned the money primarily upon the faith of the agreement that it should be made safe by means of a lien upon a government contract.

7. All or nearly all the money represented by said seven notes was, in fact, loaned upon sufficient security to George F. Ordway, in various sums and at different dates between April, 1871, and January, 1872, and was transferred by said George F. Ordway to Albert Ordway & Company about the first of October, 1871, except the sum of $10,000.00 which was transferred later. This was done under an agreement between the plaintiff and said George F. Ordway and the defend-
8 ant made in the summer and September of 1871. At the time that the money was transferred to the account of Albert Ordway & Company, the plaintiff was ill, and had been ill for a considerable period of time, and he did not recover sufficiently to be able to attend to his business until about April, 1872, and he has never entirely recovered, but is still an invalid.

When he became well enough to attend to business, the plaintiff was astounded to learn that although his money had been passed over to

Albert Ordway & Company, and although said Albert Ordway had obtained the contract with the government which the money advanced by the plaintiff enabled him to undertake, he the plaintiff had no security whatever for the carrying out of Albert Ordway & Company's agreement with him.

9 In the month of January or February, 1872, said George F. Ordway, having as aforesaid become wholly insolvent, the partnership theretofore existing between him and his cousin, the defendant, was dissolved.

9. About the middle of February, 1872, the defendant, at Richmond, Virginia, wrote to the plaintiff at Groton, Massachusetts, as follows:

"RICHMOND, VA., *Feb'y* 15, 1872.

"ROB'T G. SHEDD, Esq.,
"*Groton, Mass.:*

"DEAR SIR: I have separated all of Frank's (meaning George F. Ordway's) matters here, withdrawn his name from my books, and placed it to your credit, so that if Frank's sickness should upset his Boston business nobody can trouble what he put of yours here. I did not know *it* his arrangements with you about interest, etc., but I desire at once to assume all of his liabilities and settle them.

10 "Please give me at once statement of each and every note, date, time, signature, endorsements, etc., for I have not even a memo. of them, considering it entirely Frank's matter. Immediately on receipt of this information, I will remit you all accrued interest for everything connected here, and put the principal in some proposition for a settlement.

"Yours, truly,

"ALBERT ORDWAY.

"As far as Frank's matters here are concerned, you may rest easy; it is only a question of how long it will take to wind up the business in which they have been engaged."

In reply to this letter, the plaintiff wrote to the defendant, giving him a statement of the dates and amounts of said seven notes and of the interest due thereon.

11 On the 29th of February, 1872, the defendant wrote to the plaintiff as follows:

"Your memorandum of notes as given in your letter enlightens me completely, and I now know better how to act. I have written Frank (meaning said George F. Ordway) to-day, and told him that the straightest way out of difficulties is to simplify them; and therefore I propose to consider the arrangement between us as closed, and I assure all these obligations."

In May, 1872, the sum of $4,768.58 on account of said note for $10,000 (numbered 7) having been previously settled, the defendant gave him, the plaintiff, for the amou't still due on said note, a new note dated January 1st, 1872, for $5,231$\frac{42}{100}$, payable two years after date. A copy of said note appears in Exhibit "A" as No. 8.

10. From the time the plaintiff recovered from his illness as aforesaid until May, 1872, he repeatedly and earnestly called upon the defendant to comply with the contract between them by making some arrangement that would enable the plaintiff to receive directly from the government a proportion of the payments that would be made monthly on account of said government contract.

12

Failing to obtain a satisfactory arrangement from the defendant for this purpose, the plaintiff in May sent an attorney to Richmond to represent him in this behalf.

Through the efforts of the plaintiff's said attorney an agreement under seal was entered into by and between the plaintiff and defendant in the month of June, 1872, by which the defendant, after acknowledging himself indebted to the plaintiff in the sum of $38,500.00, and further acknowledging that he had obtained the government contract aforesaid, became bound to the plaintiff in the sum of $50,000.

13 By said instrument the defendant conveyed to the plaintiff three-eighths of the entire profits that should thereafter accrue to the defendant in carrying out said government contract, and gave the plaintiff an express lien on said contract for the amount due him. By said instrument the defendant further agreed that the plaintiff should be well and truly informed by charges and credits, vouchers and statements in writing, of the amounts received by the defendant as his share of the profits in said government contract, and that the plaintiff should at all times have access to the books of the defendant relating to said contract.

Said instrument though executed in June, 1872, was by mutual consent dated January 1, 1872. A copy of it is hereto appended, marked Exhibit B, and made part hereof.

14 The five hundred shares of James River Granite stock mentioned in this instrument were returned to the defendant by the plaintiff at or about the time the instrument was executed.

11. The government contract referred to in said instrument was a contract for furnishing granite to be used in the south wing of the State, War, and Navy Department building.

That contract was completed, and the defendant, as the plaintiff is informed and believes, derived large profits from it; but though often requested to pay to the plaintiff his (the plaintiff's) proportion of said profits, the defendant has wholly neglected and refused so to do, and there is still due from the defendant to the plaintiff on account of said notes the sum of $38,500, with interest on $38,500 from April 1st, 1873.

12. On the 20th day of January, 1873, the defendant in con-

15 sideration among other things of the plaintiff's forbearance in respect of the indebtedness aforesaid endorsed upon the back of said agreement of January 1st, 1872, and signed the following additional agreement.

"It is hereby agreed this twentieth day of January, A. D. 1873, that the within agreement shall be so far extended, that the said Ordway and his legal representatives shall be indebted to the said R. G. Shedd and his legal representatives for the amount in the exclosed agreement, to be paid from any and all income to the amount of three-eighths of the sum that may be derived from any and all business from which the said Ordway may derive any income, whether in government or other contract, as a partner of Andrews, Ordway & Green, or as a member of any other firm, or as sole, in the same manner and on the same terms as herein provided for his profits in his contracts for the new State, War, and Navy Dept. building."

16 13. In October, 1873, the defendant wrote to the plaintiff among other things as follows:

"I believe you understand that I have now about finished the south wing of the building (meaning the State, War, and Navy Department building), * * * * and that the balance of the building all comes to me and means six years' more work, and profit of $50,000.00 a year, and that it is the option of the department to continue the contract with me or not. It has got to be decided within ten days, and now is the time for you to strike for my interests and save yours."

The plaintiff thereupon wrote to influential friends at Washington, requesting them to assist the defendant in securing the contract for the remainder of said building, and the plaintiff is informed and believes that such assistance was rendered.

On the 11th of December, the defendant wrote to the plaintiff,
17 "The whole fight is now over, and I can say without doubt that I have saved my contract, and the balance of the building will be given to me. * * * I have secured that which will in the end save both yourself and myself."

Upon the information furnished by these letters, and upon information obtained at the Treasury Department and elsewhere, the plaintiff avers that the defendant has now, and for more than a year past has had, a contract in his own name with the United States for furnishing granite to be used in said buildings, from which he has derived large profits, and that he receives, and in all probability will continue to receive, large payments monthly on account of said contract.

Plaintiff further avers, upon information received partly from the defendant and partly other sources, that the defendant is largely interested in several contracts for furnishing granite to be used in va-
18 rious buildings (including a large building known as the Centennial building now being erected at Philadelphia, Pennsylvania), for different persons to the plaintiff unknown; and that from such last mentioned contracts he has for a year or more derived large profits and reasonably expects to continue to derive large profits. Nevertheless, though pressed by the plaintiff to comply with his agreement dated January 1st, 1872, and his supplemental agreement of January 20th, 1873, in respect of such profits, the defendant has utterly failed to pay to the plaintiff any proportion of the same, or to inform him as to the particulars of said contracts and the amount of profits he derived from them.

14. The defendant for many months past has been in the habit of coming to Washington City about the first day of each months for the purpose of collecting the amount due him under his contract with the government.

19 The plaintiff nearly a year ago employed counsel to attend to this matter, and sent an agent to Washington to assist him. Both counsel and agent from that time to the present have endeavored in every proper and reasonable manner to meet the defendant at Washington, obtain from him a part of the money due the plaintiff, and secure the payment of the remainder. In this they have wholly failed. The defendant has either evaded meeting them, or when he has met them pretended to be unable to do anything in the matter at that particular time, and promised to do something at some further time.

All his promises in this regard have been broken; he has not complied with any of the covenants of said bond; and his plain purpose is on one pretext and another to defer a settlement with the plaintiff
20 until the government contract shall have been completed and then to defraud him of his money.

The plaintiff has caused careful inquiry to be made at Richmond, Virginia, where the defendant resides, in order to ascertain what is his pecuniary condition, and what the probability that a judgment against him could be made good, and upon information thus obtained the plaintiff avers that while the defendant lives in a manner indicating that he is possessed of considerable means, he has so concealed and encumbered his property, if any he has, that a suit against him there either in law or in equity would avail nothing. Indeed the defendant recently

boasted to the agent of the plaintiff that he, the defendant, has no property that the plaintiff can reach, and the plaintiff is wholly without relief unless this honorable court shall compel the defendant to specially perform his agreement of January 1st, 1872, and his supplemental
21 agreement of January 20th, 1873, or shall compel him to give satisfactory security for the payment of said sum of $38,500 and interest within a resonable time.

To the end therefore that the said defendant may upon his corporal oath full, true, direct, and perfect answer make to all and singular the matters herein charged as fully and particularly as if the same were hereinafter repeated and he thereunto distinctly interrogated, and that not only as to the best of his knowledge and remembrance, but also to the best of his information, hearsay, and belief, and more especially that he may fully and without reservation answer the following interrogatories:

1. Whether the defendant has not now a contract with the Government of the United States for furnishing granite to be used in the State, War, and Navy Department building, and what are the terms of said contract in full.

22 2. Whether the defendant has received any and what payments on account of said contract, and how much of the money so received he has expended in and about the performance of said contract, and in detail the nature of such expenditures and the persons to whom the money so expended has been paid.

3. Whether the defendant or anybody for him has, or since Jan'y 1, 1872, has had, any and what contracts with other persons, firms, or corporations, and what are the terms of said contract in full.

4. Whether the defendant has received any and what payments on account of said contract, and how much of the money so received he has expended in and about the performance of said several contracts and each of them separately, and in detail the nature of such expenditures and the persons to whom the money so expended has been paid.

23 5. Whether the defendant has in his possession any and what written charges, credits, vouchers, or statements of the amounts received by him as his share of the profits in said government contracts, or in any of the contracts referred to in the 3d of these interrogatories.

The plaintiff prays as follows:

1. That the defendant may be compelled to specifically perform his said agreement of January 1st, 1872, and his supplemental agreement of January 20th, 1873, according to the terms thereof; or that he may be required to give the plaintiff a bond with good and sufficient sureties resident in the District of Columbia, conditioned for the faithful performance by him of his said several agreements, and for the repayment of said sum of $38,500 with interest and costs of suit by installments or otherwise, within a reasonable time.

24 2. That a receiver may be appointed by the court to receive the money now due the defendant, or that may become due him pending this suit, on account of said government contract or any other contract in which he may have a beneficial interest, and to pay the same over to the defendant and to the plaintiff in such proportions as the court may direct until the plaintiff's claim shall be satisfied.

3. That pending this suit the defendant, his agents, attorneys, and assigns, may be enjoined from receiving any money or other valuable thing on account of said contracts to furnish granite or on account of any of them.

4. That the writ of subpœna may issue out of this honorable court

against the defendant Albert Ordway, commanding him to appear at some certain day to be named therein, to answer the premises and abide by and perform such order and decree as may be passed herein; and for such other and further relief as the nature of the case may require.

The defendant to this suit is Albert Ordway.

ROBERT G. SHEDD.

25 I do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

ROBERT G. SHEDD.

Sworn and subscribed before me this 22nd day of December, A. D. 1874.

[SEAL.] L. L. SCAIFE,
Notary Public.

Superior court.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

I hereby certify that L. L. Scaife was at the date of the within attestation a notary public justice of the peace, within and for said county, duly commissioned and sworn; that due faith and credit are and ought to be given to his official acts; that he is duly authorized to administer oaths and take acknowledgments; that I am well acquainted with his signature and verily believe the same to be genuine, and that I am duly authorized to certify as aforesaid.

Witness my hand and the seal of said court of Boston, in said county and commonwealth, this 22nd day of December, A. D. eighteen hundred seventy-four.

[SEAL.] JOS. A. WILLARD, *Clerk.*

26 *Exhibit A to bill.—Filed Ja'y* 4, 1875.

$5,000.] BOSTON, *September* 30, 1871.

Five years after date we jointly and severally promise to to the order of R. G. Shedd, attorney, five thousand dollars for value received, with interest at the rate of seven per cent. per annum.

G. F. ORDWAY.
ORDWAY & CO.
J. M. ORDWAY.
ALBERT ORDWAY & CO.
ORDWAY SLATE CO.,
By ALBERT ORDWAY, *Agent.*

[Stamp.]

$4,000.] BOSTON, *September* 30, 1871.

Five years after date we jointly and severally promise to pay to the order of R. G. Shedd, attorney, four thousand dollars for value received, with interest at the rate of seven per cent. per annum.

G. F. ORDWAY.
ORDWAY & CO.
J. M. ORDWAY.
ALBERT ORDWAY & CO.
ORDWAY SLATE CO.,
By ALBERT ORDWAY, *Agent.*

[Stamp.]

27 $7,000.] BOSTON, *October* 2, 1871.

Five years after date we jointly and severally promise to pay to the order of R. G. Shedd, trustee, seven thousand dollars for value received, with interest at the rate of six per cent. per annum.

G. F. ORDWAY.
ORDWAY & CO.
J. M. ORDWAY.
ALBERT ORDWAY & CO.
ORDWAY SLATE CO.,
By ALBERT ORDWAY, *Agent.*

[Stamps, $3.]

$7,000.] BOSTON, *October* 2, 1871.

Five years after date we jointly and severally promise to pay to the order of R. G. Shedd, trustee for C. A. Shedd and H. E. Phillips, seven thousand dollars, for value received, with interest at 6 % p'r annum.

G. F. ORDWAY.
ORDWAY & CO.
J. M. ORDWAY.
ALBERT ORDWAY & CO.
ORDWAY SLATE CO.,
By ALBERT ORDWAY, *Agent.*

[Stamps, $3.50.]

28 $5,000.] BOSTON, *October* 2, 1871.

Five years after date we jointly and severally promise to pay to the order of R. G. Shedd, trustee, five thousand dollars for value received, with interest at six per cent. per annum.

G. F. ORDWAY.
ORDWAY & CO.
J. M. ORDWAY & CO.
ORDWAY SLATE CO.,
By ALBERT ORDWAY, *Agent.*

[Stamp, $2.]

$5,268.58.] BOSTON, *October* 2, 1871.

Five years after date we jointly and severally promise to pay to the order of R. G. Shedd, trustee, five thousand two hundred and sixty-eight $\frac{58}{100}$ dollars for value received, with interest at the rate of six per cent. p'r annum.

G. F. ORDWAY.
ORDWAY & CO.
J. M. ORDWAY.
ALBERT ORDWAY & CO.
ORDWAY SLATE CO.,
By ALBERT ORDWAY, *Agent.*

[Stamp.]

29 $10,000.] RICHMOND, VA., *July* 29, 1871.

Five months after date I promise to pay to R. G. Shedd, or order, without offset, ten thousand dollars, negotiable and payable at 1st National Bank of Boston, Mass., for value received.

GEORGE F. ORDWAY.

(Endorsed:) Albert Ordway & Co.; Ordway Slate Company; Albert Ordway, agent; Ordway & Co.

$5,231.42.] RICHMOND, VA., *Jan'y* 1, 1872.

Two years after date I promise to pay to Robert G. Shedd, or order, without offset, five thousand two hundred & thirty-one $\frac{42}{100}$ dollars, negotiable and payable at First National Bank, Boston, value received.

ALBERT ORDWAY.

(Endorsed:)
Without recourse pay J. T. Goddard, or order.

ROBERT G. SHEDD.

Pay to order of Aaron F. Perry for collection.

J. T. GODDARD.

30 *Exhibit B to bill.*

Memorandum of an agreement entered into this first day of January, A. D. 1872, by and between Albert Ordway, of Richmond, Virginia, of the first part, and R. G. Shedd, of Groton, Middlesex County, Massachusetts, of the second part, witnesseth:

That, whereas, the said Ordway is now liable to the said Shedd by reason of certain promissory notes, signed and given by Ordway and others, for certain moneys invested by the said Shedd, as trustee of C. A. Shedd, H. E. Phillips, and J. G. Phillips, amounting in the whole to the sum of thirty-eight thousand and five hundred dollars ($38,500), and whereas the said Ordway has entered into a contract with the United States for furnishing and cutting the granite for building the State, Army, and Navy Department buildings, at Washington, D. C., and is now filling said contract as rapidly as he can under government supervision, said contract being filled and performed with others, and especially with the firm of "Andrews, Ordway & Green," of which said firm said Ordway is copartner:

31 Now, therefore, in consideration of the benefits accruing from said investment, viz, the sum of thirty-eight thousand and five hundred dollars ($38,500) above named, and of the mutual agreements hereinafter made, the said Ordway, of the first part, hereby covenants, agrees for himself, his heirs, assigns, legal representatives, and appointees, and is hereby held and firmly bound unto the said Shedd, of the second part, as trustee aforesaid, in the full and just sum of fifty thousand dollars ($50,000), in default of each or any of the covenants, agreements or contracts hereinafter made or intended to be made. And the said Ordway hereby conveys to the said Shedd three-eighths ($\frac{3}{8}$ths) of the entire profits that shall accrue to him, the said Ordway, in carrying out and filling said contract with the said United States Government, or in which he may be interested in carrying out absolutely and without any reservation in law or equity, designing and intending

32 hereby to transfer as a lien waiving all exceptions, and hereby confess judgment for said amount of $38,500, in and to the said Ordway's right and interest in the said contract, and to three-eighths ($\frac{3}{8}$) of the profits that accrue to the said Ordway, either individually or as a partner in the firm of "Andrews, Ordway and Green." Intending hereby from the income and profits of said government contract to amply, fully and finally secure said Shedd, as said trustee, from any and all loss by reason of his said loan of ($38,500) thirty-eight thousand & five hundred dollars.

And the said Ordway further covenants and agrees that the said Shedd or his legal representatives and attorney shall well and truly

know and be informed by charges, credits, vouchers, and statements in writing of the amounts received by said Ordway as his share of the profits in said government contract, and the said Ordway cove-
33 nants and agrees to procure the consent of said copartners to so much of said contract as effects their interests, in writing, and also to procure and exhibit to the said Shedd the certificates of the other partners of said firm of the amounts drawn and received by the said Ordway as profits and income from said government contract. That the said Shedd or his legal representatives shall at all times have access to the books of the said firm, and of the said Ordway relating to said government contract. Intending hereby to include all the said profits and income of the said Ordway to the amount of ($\frac{3}{8}$) three-eighths thereof, individually and as one of the firm of Andrews, Ordway & Green, embracing all profits for furnishing and cutting granite for the said buildings, furnishing hands employed with stores, and any and all commissions from the government whether in purchase or sale of
34 tools, materials, or all or any other profits as they accrue until the final payment of the sum of ($38,500) thirty-eight thousand & five hundred dollars and interest at seven per centum per annum, to be reckoned and charged from the 30th day of September, 1871, and that he will make any and all of said payments as they accrue to him and are payable to him from the U. States Government, and at such times as they are divided to the said firm of Andrews, Ordway & Green. And in default of any one of said payments then the whole amount shall be due and payable at once.

And the said Ordway further covenants and agrees that the said Shedd shall hold the said several notes made by him and others as aforesaid for the said sum of ($38,500) thirty-eight thousand and five hundred dollars as a further security for the fulfillment and performance
35 of this said bond and agreement; and that anything hereby done, or agreed to be done, shall in no ways release the said copromisors on said notes until their final payment, or they become extinct and void by the payment of this bond.

And the said Shedd agrees to receive said profits as they accrue aforesaid, and so as a further consideration to return to said Ordway five hundred shares (500) of James River granite stocks, whose par value is ($50,000) fifty thousand dollars. And out of the first amount paid by said Ordway to appropriate and apply said payment towards the extinguishment of his individual note of ($5,231 $\frac{42}{100}$) five thousand two hundred and thirty-one $\frac{42}{100}$ dollars, which is a renewal note, and forms part of the said ($38,500) thirty-eight thousand five hundred dollars.

36 In witness whereof the said Ordway, designing to sign this as in the nature of a bond with the penalty attached, has hereunto set his hand and seal, and the said Shedd, in token of his consent thereto and acceptance of said bond with penalty, has also affixed his signature and seal to the same.

ALBERT ORDWAY. [SEAL.]
ROBERT G. SHEDD. [SEAL.]

W. C. GRADY,
Witness.

(Endorsed:)

It is hereby agreed this 20th day of January, A. D. 1873, that the within agreement shall be so far extended that the said Ordway and his legal representatives shall be indebted to the said R. G. Shedd and his legal representatives for the amount in the endorsed agreement, to

be paid from any and all income to the amount of three-eighths of the sum that may be derived from any and all business from which the
37 said Ordway may derive any income, whether in government or other contracts, as a partner of Andrews, Ordway & Green, or as a member of any other firm, or as sole, in the same manner and on the same terms as herein provided for his profits in his contracts for the new State, War and Navy Dep't building.

ALBERT ORDWAY.

Witness:
W. C. GREEN.

It is hereby certified that on this 2d day of December, 1874, Robert G. Shedd appeared before me in the office of the clerk of the supreme court of the District of Columbia, at Washington, D. C., and then and there in my presence affixed to the within bond an United States internal revenue stamp of the denomination of twenty-five cents, and cancelled the same.

[SEAL.]

R. J. MEIGS,
Clerk Sup. C't D. C.,
By L. P. WILLIAMS,
Ass't Clerk.

38 *Summons to answer.*

In the supreme court of the District of Columbia, January 4th, 1875.

ROBERT G. SHEDD, COMPL'T,
against
ALBERT ORDWAY, DEF'T. } No. 4092. Equity docket, 14.

The President of the United States to Albert Ordway, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill under pain of attachment and such other process of contempt as the court shall award.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

Witness:
D. K. CARTTER,
Chief Justice.

Marshal's return.

Summoned and served injunction on def't.

A. SHARP, *Marshal.*

JANUARY 4TH, 1875.

39 *Restraining order.*

An original bill praying that the defendant, Albert Ordway, his agents, assigns, and attorneys be enjoined from collecting or receiving from the Treasury Department of the United States any money on his contract with the United States for furnishing granite to be used in the construction of the State, War, and Navy Department building on 17th street and Pennsylvania avenue, Washington, D. C., is this day filed.

Hearing is fixed for 8th day of January, 1875, at 11 o'clock a. m.

Until further order, you are hereby restrained as prayed.

By order of the court.

D. K. CARTTER,
Chief Justice.

40 *Injunction order.—Filed Jan'y 8, 1875.*

In the supreme court of the Dist. of Columbia.

ROBERT G. SHEDD *vs.* ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Upon motion of the plaintiff's solicitors, and upon its appearing to the court that the defendant, though duly summoned and served with a copy of the restraining order heretofore granted in this case, on the 4th day of January, 1875, it is this 8th day of January, 1875, ordered that pending this suit or until the final decree in this cause the defendant, his agents, attorneys, and assigns be and they hereby are enjoined from collecting or receiving from the United States, or from any person or corporation whatsoever, any money on account of the defendant's contract with the United States mentioned in said restraining order, or on account of any contract with any person or corporation whatsoever included within the terms of said defendant's agreements set forth in Exhibit B to the bill of complaint and dated respectively, January 1st, 1872, and January 20th, 1873.

By the court.

A. W.

41 *Answer of defendant.—Filed Feb'y 4, 1875.*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD, COMPLAINANT, *vs.* ALBERT ORDWAY, DEFENDANT. } No. 4092. Equity.

The answer of the above-named defendant, Albert Ordway, to the bill of complaint of the above-named complainant, Robert G. Shedd, filed against him.

For answer to said bill of complaint or to so much thereof as I am advised it is material that I should make answer, I say as follows:

1, 2. I admit the allegations of the first and second paragraphs of the said bill.

3. As to the matters contained in the third paragraph of said bill, I can neither admit nor deny the same, but leave the complainant to his proof thereof.

4. I deny that there was any understanding or agreement between the complainant and the firm of Albert Ordway and Company, that
42 the promissory notes mentioned by the complainant, and numbered from one to six inclusive in his Exhibit A, should be paid by installments from time to time as I should receive moneys under the contract referred to by said complainant; and I respectfully refer to the agreement set forth in complainant's Exhibit B as showing the true understanding and agreement between the parties.

5. I presume the complainant has correctly stated the sources whence he derived the money lent by him.

6. I deny that I ever represented to the complainant that the money so as aforesaid lent by him would be secured upon a government contract. I do not know, and therefore can neither admit nor deny, what

representations were made to the complain't by any other persons. The security subsequently given to the complainant was suggested by myself, and was an entirely voluntary act on my part.

43 7. If by the allegations of the seventh paragraph of the bill the complainant means to impute fraud or misrepresentation to me, or to allege under advantage taken by me of his condition, I wholly deny the charge. At the time referred to by the complainant, I had never had, and had not then, any business transactions whatever with him.

8. I admit the allegations of the 8th paragraph of the complainant's bill, to the effect that the partnership between George F. Ordway and myself was dissolved in February, 1872.

9. I admit the allegations of the 9th paragraph of the complainant's bill.

10. I deny that I declined or refused at any time to enter into any reasonable or proper arrangements with the complainant, prior to May, 1872. I deny that the complainant had any right to demand an arrangement from me. I admit that in June, 1872, I entered into

44 the bond and agreement with the complainant, whereof a copy is contained in his Exhibit B, and I refer to said exhibit for a true and correct statement thereof. I aver that such bond and agreement were my own voluntary act, in pursuance of suggestions emanating from me, and of my desire to settle the affairs of the said George F. Ordway. I deny that such agreement gives the complainant a lien upon the aforesaid government contract. The lien is given only on my interest therein, and on the profits thereof.

11. I deny that I have derived large profits from said contract, or any profits whatever; or that said contract is wholly completed. The said contract, as the complainant very well knew, had been assigned and transferred by me before the execution of the aforesaid bond and agreement of June, 1872, to the firm of "Andrews, Ordway and Green," whereof I was and am a member. The affairs of said firm of

45 "Andrews, Ordway and Green" have not been settled, but are now in course of liquidation. As soon as said affairs are settled, and my interest therein ascertained, I am ready and willing to pay to the complainant, out of the profits thereof, the just proportion required by the said bond and agreement. The complainant has never been refused any information required by him in reference to my affairs or the affairs of said firm.

12. I admit the execution of the supplemental agreement set forth in the 12th paragraph of the bill.

13. The aforesaid contract for furnishing granite to the State Department building has been extended so as to include the remaining wings as far as the appropriations will allow. The said contract, though made with the government in my name, was really for the use and benefit of the said firm of "Andrews, Ordway and Green," and

46 of the "Westham Granite Company" of Virginia, wherein the said firm of "Andrews, Ordway and Green" was merged, and whereof I am a stockholder, as one of said firm, and was by me immediately assigned to said company, the consideration for such transfer being the issue of certain shares of the stock of said company to the said firm; said shares are largely incumbered with the yet unsatisfied debts of said firm, and it is impossible at present to ascertain their value.

I deny that I have received any profit whatever as yet from said contract, for said company has not yet declared any dividend, and has not,

as I believe, realized any profits. It only worked for about four months out of the last twelve months; and the work has now been discontinued on account of the failure of appropriat*eness*, resulting in loss rather than profit to said company. Payments were made by
47 the government on account of said contract only for four or five months, which were all for the use of said company, and were made to me as their agent, and were only sufficient to meet the pay-rolls of and the company, and fifteen per centum additional to defray the working expenses of the company.

The only contracts in which I am interested for the furnishing of granite are the contracts of said company, and my interest is only that of a stockholder as aforesaid. I have not yet derived any profits from any of them. As soon as any such profits shall have been received by me, the same will be devoted to the purposes of the aforesaid bond and agreement.

The complainant has never requested of me any information in regard to said contracts prior to the filing of his bill in this cause, and
48 consequently I could not have refused him such information. I deny that I have in any manner failed to comply with my said bond and agreement, as far as performance thereof has matured and become incumbent on me.

14. I deny that I have evaded meeting the complainant's agent or attorney, or that I have failed to comply with the covenants of the aforesaid bond and agreement; or that it is my purpose to defer a settlement unreasonably, or that I intend or desire to defraud the complainant in any respect. On the contrary, I aver that it is my purpose, as soon as and whenever dividends are declared by said company, to devote the required portion thereof to the satisfaction of the complainant's claim, whether the said contracts or any of them be then completed or not.

15. I deny that I live in a style of luxury, or that I have concealed or fraudulently incumbered my property, or that I have made any boasts whatever to the complainant's agent, as alleged.

49 For answer to the interrogatories of the complainant's bill, I say as follows:

1. I have no*w* contract in my name with the Government of the United States, as hereinbefore stated, but the same has been assigned as above set forth. I will file a copy herewith or produce the same at the hearing.

2. I have received payments amounting to about $ on account of said contract, but only as the agent of the aforesaid company; and the same have been transferred to said company, and have been used in the payment of the said expenses of said company. It would require voluminous transcripts from the books of said company to show to whom payments were made of such sums so received. They were disbursed to the laborers and employees, and used in the ordinary expenses of management.

3. I have had no contracts, nor has any one for me had any
50 contracts since Jan. 1, 1872, except as hereinbefore stated.

4. The complainant's fourth interrogatory has been answered in my answer to the second.

5. I have received no profits from any of the contracts aforesaid, and I have in my possession no evidences of any such profits.

I respectfully submit that the complainant is not entitled to the relief prayed for by him, or to any relief whatever in the premises, and that he has not exhibited such a case in his bill as entitles him to a standing in a court of equity.

Wherefore I ask to have the same benefit herefrom as though I had specially demurred to said bill, and to be hence dismissed with costs.

ALBERT ORDWAY.

MERRICK & MORRIS,
Sol. & of Counsel for Defendant.

51 I do solemnly swear that I have read the foregoing answer signed by me, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

ALBERT ORDWAY.

Subscribed and sworn to before me this 3d day of February, A. D. 1875.

[SEAL.] WOODBURY B. BIGELOW,
Notary Public.

Notice of motion to dissolve injunction.—Filed Feb'y 5, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD, COMPLAINANT, *vs.* ALBERT ORDWAY, DEFENDANT. } No. 4092. Equity.

MESSRS. STANTON & WORTHINGTON,
Sol. & of Counsel for Complainant:

Please take notice that we have, this 4th day of February, A. D. 1875, filed an answer on behalf of the defendant in the above-
52 entitled cause; and that on Tuesday, the 9th day of February, A. D. 1875, at 10 o'clock a. m., or as soon thereafter as the court will hear us, we will move to dissolve and vacate the injunction or restraining order heretofore granted in said cause.

R T. MERRICK,
M. F. MORRIS,
Sols. & of Counsel for Defendant.

Service acknowledged of the foregoing notice this 5th day of February, A. D. 1875.

STANTON & WORTHINGTON,
Att'ys for Pl'ff.

Exceptions to Answer.—Filed Feb'y 8, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD *vs.* ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Exceptions taken by the above-named plaintiff to the answer of the defendant for insufficiency.

The plaintiff excepts to the answer—

53 1. For that the defendant has not in and by his said answer set forth, whether, as alleged in the 13th paragraph of the bill, in October, 1873, he, the defendant, wrote to the plaintiff among other

things as follows: "I believe you understood that I have now about finished the south wing of the building," (meaning the State, War, and Navy Department building,) * * * "and that the balance of the building all comes to me and means six years, more work and profit of $50,000 a year, and that it is the option of the department to continue the contract with me or not. It has got to be decided within ten days, and now is the time for you to strike for my interest and save yours," or whether the plaintiff thereupon wrote to influential friends at Washington, requesting them to assist the defendant in securing the contract for the remainder of the State, War, and Navy Department building; or whether such aid was rendered, or whether on the 11th of December
54 the defendant wrote to the plaintiff: "The whole fight is now over, and I can now say, without doubt, that I have saved my contract, and the balance of the building will be given to me. * * * I have secured that which will in the end save both yourself and myself.

2. For that the defendant has not in and by his said answer according to the best of his knowledge, remembrance, information, hearsay, and belief, answered and set forth what are the terms in full of his contract for furnishing granite to be used in the State, War, and Navy Department building.

3. For that the defendant has not in manner aforesaid set forth what payments he has received on account of said contract, nor how much of the money so received he has expended in and about the performance of said contract, nor the nature of such expenditures, nor the persons to whom the moneys expended has been paid.

ROBERT G. SHEDD,
By EDWIN L. STANTON & A. S. WORTHINGTON,
Sol'rs for Complainant.

55 *Leave to file amended and supp'l bill.—Filed Feb'y* 9, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Upon motion of the plaintiff's solicitors, ordered this 9th day of February, 1875, that the plaintiff be and he hereby is allowed to file an amended and supplemental bill.

By the court.

A. WYLIE,
Justice.

Amended and supplemental bill.—Filed Feb'y 9, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Amended and supplemental bill.

By way of amendment and supplement to his bill of complaint in

this cause, and by leave of the court first had and obtained, the plaintiff complains as follows:

56 16. That some time in the spring of 1874, the exact time being to the plaintiff unknown, the defendant and the other persons composing the firm of Andrews, Ordway & Green, referred to in said bond, procured from the legislature of the State of Virginia an act incorporating them as The Westham Granite Company of Virginia, and that the defendant thereupon, so far as by the law he could do so, assigned to said company the said contract with the United States. This assignment was made for the purpose of enabling the defendant fraudulently to evade compliance with his said bond, and the supplemental agreement endorsed thereupon. The members of said firm, including the defendant, are officers of said company, and receive salaries as such, and by this subterfuge the defendant periodically receives money derived from said contract with the United States and other con-

57 tracts included in said bond, and applies the same to the payment of his private expenses and to other purposes wholly disconnected from the business of said contracts, and yet asserts, with an appearance of truth, that money so paid him is not derived from the profits of said contracts or any of them.

17. That the defendant had several times in the months of November and December, 1874, been requested by the plaintiff's solicitors, by letter, to call upon them in reference to the subject-matter of this suit, and had several times written to them promissing so to do; that on the morning of the 4th of January, 1875, the defendant reached Washington, and instead of calling on said solicitors, proceeded at once to endeavor to obtain the money due on the State Department contract for the months of December, seeking, as the plaintiff is informed and believes, to get the money and leave Washington the same day, so

58 as to evade service of process in this suit. He did on that day obtain a check or checks on the Treasury of the United States, under said contract, to the amount of about eighteen thousand dollars ($18,000); about six o'clock on the evening of said day he was served with the summons and restraining order in this case by the marshal or his deputy. The plaintiff is informed and believes, and hereby charges, that after the plaintiff was so served with process, he in intentional violation of the restraining order, transferred, said check or checks by endorsement to some person to the plaintiff unknown, and said person collected the money represented by it or them, and applied it to the use of the defendant with the defendant's knowledge and by his direction.

To the end, therefore, that the said defendant may, upon his corporal oath, full, true, direct, and perfect answer make to all and sin-

59 gular the matters herein charged, as fully and particularly as if the same were hereinafter repeated, and he thereunto distinctly interrogated; and that not only as to the best of his knowledge and remembrance, but also to the best of his information, hearsay, and belief, and more especially that he may fully and without reservation answer the following interrogatories:

6. Who composed the firm of Andrews, Ordway and Green.

7. What persons were named as the incorporators in the act incorporating *in the act incorporating* the Westham Granite Company?

8. What are the terms of said act in full?

9. Who are the officers of said company, and what are the salaries of such officers?

9½. Particularly is the defendant an officer of said company? If he

is, what salary does he receive, and how long has he received it?
60 Specify in detail the exact amounts received on account of salary, and state when they were received.

10. What is the capital stock of said company?

11. Into how many shares is the capital stock divided?

12. How many such shares does the defendant own? How long has he owned such shares?

13. How many such shares does the firm of Andrews, Ordway & Green own? What is the interest of the defendant in the shares of said firm?

14. Has the firm of Andrews, Ordway & Green been dissolved? If so, when?

15. State whether the Westham Granite Company has now, or since January 1st, 1872, has had any, and what, contracts with any persons, firms, or corporations for furnishing granite, and give the terms of such contracts as to quantities, prices, and times of delivery?

61 16. What amount of money, or its equivalent, has the Westham Granite Company received on account of the State Department contract, the Centennial building contract, and each of the other contracts referred to in the previous question, and what quantity of granite has said company furnished under each of said contracts?

17. Describe particularly the check (or each of the several checks) received by the defendant from the United States on the 4th of January last, stating on whom and by whom it was drawn, what was its amount, and to whose order it was payable?

18. How long did the defendant retain said check (or checks) in his possession; to whom did he first transfer it? State the hour and minute of such transfer and endorsement, to the best of your recollection. Where did this take place?

19. State whether said check or checks has or have been paid, to whom paid, and when and what disposition has been made of the proceeds?

62 *Prayers.*

The plaintiff therefore prays as follows:

1. That an account of the moneys received by the defendant, nominally as salary, but really as profits as aforesaid, may be taken under the direction of the court, and the defendant required to pay to the plaintiff three-eighths of the whole amount so received.

2. That the defendant may be required, on pain of attachment, to at once deliver up to the court, or a receiver, to be appointed by the court, said sum of about $18,000, and that the same may be held pending this suit, subject to the further order of the court.

ROBERT G. SHEDD,
By STANTON & WORTHINGTON,
His Solicitors.

I, John T. Goddard, on oath say that I am the agent and attorney in fact of the plaintiff in this case, that I have read the foregoing amended and supplemental bill, that the facts therein stated upon personal knowledge are true, and those stated upon information from others I believe to be true.

JOHN T. GODDARD.

63 Subscribed and sworn to before me this 6th day of February, 1875.

[SEAL.] J. C. HEALD,
Notary Public.

Summons to answer amended & supp'l bill.

In the supreme court of the District of Columbia, February 9th, 1875.

ROBERT G. SHEDD, COMPL'T, *against* ALBERT ORDWAY, DEF'T. } No. 4092. Equity docket, 14.

The President of the United States to Albert Ordway, defendant:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the amended and supplemental bill, under pain of attachment, and such process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Asst. Clerk.

Service acknowledged for def't Feb'y 7, 1875.

R. T. MERRICK,
M. F. MORRIS,
For Defendant, Albert Ordway.

64 *Amendment to amended & supp'l bill.—Filed Feb'y* 19, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD *vs.* ALBERT ORDWAY. } 4092. Equity.

Amendment to amended and supplemental bill.

By way of amendment to his amended and supplemental bill in this case, the plaintiff adds to the same the following interrogatories:

20. How many cubic feet of granite have been forwarded to the United States under the defendant's contract for furnishing granite to be used in the State Department building?

21. Of the money paid to the defendant on account of said contract, how much has been paid on account of the full cost of the labor, tools, shops, sheds, materials, and insurance which, by said contract, the United States agreed to pay to the defendant? How much of it has been paid on account of the fifteen per centum of such cost? How much of it has been paid on account of the fifty-nine cents per cubic foot for the granite furnished?

22. What person or persons has the United States employed since said contract was entered into for the purpose of determining the amount of the cost of said labor, tools, shops, sheds, materials, and insurance as provided by said contract? State the name, residence, and occupation (and rank, if any) of the persons so employed.

ROBERT G. SHEDD,
By STANTON & WORTHINGTON,
His Solicitors.

65 *Answer to amended & supplemental bill.—Filed Mar. 3, 1875.*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD, COMPLAINANT,
vs.
ALBERT ORDWAY, DEFENDANT. } No. 4092. Eq. doc., 14.

The answer of the above-named defendant, Albert Ordway, to the amended and supplemental bill of the above-named complainant, Robert G. Shedd.

For answer to the said amended and supplemental bill, I say as follows:

I deny that only the members of the firm of Andrews, Ordway and Green procured from the legislature of the State of Virginia an act incorporating them as the Western Granite Company of Virginia; and I aver that there were other incorporators in said company besides the members of said firm. I deny that the assignment by me to said
66 company of my contract with the United States was made for the purpose of enabling me in any manner whatever to evade compliance with my bond and agreement and the agreement supplemental thereto given by me to the complainant; and I aver that such assignment was made in good faith for valuable consideration, and with the sole purpose of enabling the said firm and myself to carry out the said contract and to derive some benefit therefrom.

The facts in reference to such assignment are the following:

During the commercial crisis and panic which began in September, of the year 1873, the said firm of Andrews, Ordway and Green became somewhat embarrassed and was compelled to borrow a large sum of money, and succeeded in obtaining such sum from one J. Condit
67 Smith, a resident of Buffalo, in the State of New York.

The said J. Condit Smith, for his own security, suggested the formation of an incorporated company, and that he would take stock therein in satisfaction of his claim for the money borrowed by said firm from him. Thereupon a charter was procured from the State of Virginia, and a company was organized thereunder with the said J. Condit Smith, John Pickering, R. Snowden Andrews, Samuel S. Green, and myself as incorporators—the said Andrews, Green, and myself being the members constituting the firm of Andrews, Ordway and Green. The said J. Condit Smith was chosen president of the company without salary. The said John Pickering was chosen auditor; the said R. Snowden Andrews became treasurer; the said Samuel S. Green became
68 superintendent of the company's quarry; and this defendant was elected secretary, each with a salary of $2,500 a year.

Upon the organization of said company the said firm of Andrews, Ordway and Green assigned and transferred to said company all its property and assets, and its interest in the aforesaid contract with the government, subject to the payment of its debts; and leaving the respective rights of its members to be adjusted between themselves. And in consideration of such assignment and transfer said firm received fourteen hundred and seventy shares of the capital stock of said company. The debts of said firm amount to upwards of thirty-three thousand dollars ($33,000), which are a charge upon said shares of
69 stock; and the interest of this defendant amounts to about one-third of the residue of said shares. But I cannot state such interest precisely, for the reason that there are certain controversies ex-

isting between the members of said firm and its officers, have been referred to an arbitrator for an adjustment, and said arbitrator has not yet rendered his award. Neither can I state the value of said stock.

I deny that in the premises there has been any subterfuge or evasion practiced by me, or that the receipt of salary by me from said company is any manner an application by me to my own use of profits derived from the aforesaid contract, and to which the complainant has a right.

17. The answer to the allegations of paragraph numbered 17
70 in said amended and supplemental bill: I say that I did call upon the complainant's solicitors in reply to their request; but that their demands were so preposterous that we could come to no understanding. I have always expressed myself willing to abide by and perform the stipulations of my aforesaid bond and agreement; but the complainant, by his solicitors, required of me further covenants and agreements which it was not in my power to make.

I admit that I came to Washington on the morning of the 4th day of January, A. D. 1875, and that I proceeded to obtain the money due on the State Department contract for the month of December, as it was my right to do. I obtained four checks therefor on the Treasury of
71 the United States, and forthwith endorsed and transferred the same, one to the aforesaid J. Condit Smith, who was with me at the time, and others to the Western Granite Company of Virginia. Said checks were received and the endorsement and transfer thereof made at or about the hour of 2 o'clock in the afternoon of said 4th day of January, 1875, several hours before the service upon me of the summons and restraining order issued in this cause, and before I had any knowledge of the institution of this suit.

I deny that I had any intention in the premises to evade service of process in this suit; and I deny that the aforesaid checks were endorsed in any violation of said restraining order; and I deny that the money collected upon said checks was applied to my use or according
72 to my directions. I deny all the allegations of said seventeenth paragraph inconsistent with the statements herein contained.

For answer to the 6th interrogatory appended to the said amended and supplemental bill, I say that the firm of Andrews, Ordway and Green was composed of R. Snowden Andrews, Albert Ordway, and Samuel S. Green.

For answer to interrogatory No. 7, I say that the persons named as incorporators in the Western Granite Company were J. Condit Smith, John Pickering, R. Snowden Andrews, Albert Ordway, and Samuel S. Green.

For answer to interrogatory No. 8, I append a copy of the act of incorporation of said company.

For answer to interrogatory No. 9, I refer to the statement con-
73 tained in my answer to paragraph No. 16 of the amended and supplemental bill.

For answer to interrogatory No. 9½, I say that I am secretary of said company at a salary of $2,500 a year, payable in monthly instalments, and that I have been in receipt of such salary since the 1st day of February, A. D. 1874, and have received all the monthly instalments that have accrued since that day, and such instalments have been received about the beginning of each month.

For answer to interrogatory No. 10, I say that the capital stock of said company is $300,000, divided into three thousand (3,000) shares of the par value of one hundred dollars ($100) each share.

For answer to interrogatory No. 11, I say as in last answer.

74 For answer to interrogatory No. 12, I say that I own no shares of said stock in my own name; that the firm of Andrews, Ordway & Green owns 1,470 shares thereof; that said shares are subject to the payment of the debts of said firm, amounting to about $33,000; that I will be entitled to about one-third of the residue, but the precise amount I cannot state for the reasons hereinbefore set forth. The firm of Andrews, Ordway and Green have been the owners of said 1,470 shares since the 24th day of March, 1874.

For answer to interrogatory No. 13, I say as in last answer.

For answer to interrogatory No. 14, I say that there has never been any formal dissolution of the firm of Andrews, Ordway and Green, and its affairs have not been settled, but are now in course of
75 settlement by Bradley T. Johnson, esq., attorney at law, of Richmond, in the State of Virginia. But said firm ceased to transact business on the organization of the Westham Granite Company, of Virginia, about the 1st day of February, A. D. 1874.

To interrogatory No. 15 I demur, and say that the same is irrelevant to the issue in this cause, and to answer it would involve vast labor and trouble, and require a very considerable period of time.

To interrogatory No. 16 I demur, and say that the same is irrelevant to the issue in this cause, and to answer it would involve great labor and trouble, and require a very considerable period of time.

For answer to interrogatory No. 17, I say that the four checks
76 received by me on the 4th day of January, 1875, on account of the contract aforesaid were drawn by R. C. Morgan, disbursing agent of the State Department, on the Treasurer of the United States, payable to my order, and were one check of $14,500$\frac{0}{100}$, one check of $2,090$\frac{96}{100}$, one check of $1,500$\frac{0}{100}$, and one check of 198\frac{15}{100}$.

For answer to interrogatory No. 18, I say that I transferred the said checks or drafts immediately upon the receipt in the office of said Morgan about two o'clock in the afternoon of the 4th day of January, A. D. 1875, to the said J. Condit Smith and the Westham Granite Company, as hereinbefore stated, the said J. Condit Smith receiving one of said checks in his individual capacity for his own use, and the other
77 three for the said company and as its president. I cannot state the time of the transfer more precisely than as herein stated.

For answer to interrogatory No. 19, I say that I presume the said checks have been paid, the one to said Smith and the others to said company, but I cannot state when nor what disposition has been made of the proceeds other than that the amount received by said company has been used mainly in the payment of its laborers and employees, and in the discharge of the current expenses of the company.

I respectfully submit that it would be impossible for me without a vast expenditure of time, labor, and clerical assistance to give any detailed statement of the affairs of said company or of the aforesaid
78 firm or of their receipts and disbursements or of the purposes for which such *such* disbursements were made or of the persons to whom they were made. The affairs of the aforesaid firm have been in the course of adjustment for several months; their books and papers are exceedingly voluminous, and a large clerical force would be required to give such a statement as the complainant demands.

I submit also that the complainant is not entitled to the relief prayed for by him or to any relief whatever in the premises, and that he has not shown such a case as entitles him to the aid of a court of equity, and I pray to have the same benefit from this answer as though

79 I had specially demurred to the complainant's bill, and to his amended and supplemental bill.

ALBERT ORDWAY.

R. T. MERRICK,
M. F. MORRIS,
Solicitors & of Counsel for Defendant.

I do solemnly swear that I have read the foregoing answer signed by me, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

ALBERT ORDWAY.

Subscribed and sworn to before me, this 23d day of February, A. D. 1875.

[SEAL.] WOODBURY B. BIGELOW,
Notary Public.

80 *Aff'd't of R. Snowden Andrews.—Filed Mar. 3, 1875.*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD, COMPLAINANT,
vs.
ALBERT ORDWAY, DEFENDANT. } No. 4092. Eq. doc.

R. Snowden Andrews, being duly sworn, deposes and says that he is the treasurer of the Westham Granite Company of Virginia, mentioned n the proceedings in the above-entitled cause, and also was one of the firm of "Andrews, Ordway and Green" therein mentioned; that the contract in said proceedings mentioned as having been entered into between the United States and the defendant, Albert Ordway, for the furnishing of granite to the new State Department building was duly transferred by the said defendant to the said firm and by the said firm
81 to the said Westham Granite Company in the spring of 1874; that the amount of money now due and payable on account of said contract and remaining unpaid in the Treasury of the United States on account of the injunction issued in this cause, is equitably and justly the money of said company and not of the defendant, Ordway, and the said Ordway has no just right or title thereto unless as the agent of said company; that the amount so remaining in the Treasury is the sum of $8,400 or thereabouts; that the said amount is simply the amount which, in accordance with the aforesaid contract, the government advances for the purpose of paying the laborers and workmen of the said company according to the pay-rolls for one-half of the month of January
82 last, during which time there was an appropriation available for the purposes of said contract, together with fifteen per centum additional for the general working expenses of the company; that the government keeps an officer of its own at the works of the company for the purpose of keeping said pay-rolls and insuring the correctness thereof; and the said pay-rolls, when signed by the men, are transmitted to the proper officer of the government in Washington for inspection and approval; and only upon such inspection and approval is there a payment ordered upon such contract to the amount of said pay-rolls, with fifteen per centum thereon; and if the said laborers and employees
83 should remain unpaid for any unreasonable length of time, the government itself would send the said amount by its own officers

and pay the said laborers and employees; and that the said pay-rolls for January were duly signed by the men and were promptly sent to Washington; and the said laborers and workmen have now been deprived of their wages on account of the restraining order and injunction in this cause for the period of upwards of a month, and are suffering in consequence.

And this affiant further says that great trouble has resulted to said company in consequence of the premises.

And this affiant further says that the salaries paid to the officers of said company are just and reasonable and only a fair compensa-
84 tion for the services performed by them; and are not in any manner intended to defraud the complainant or any one else, or to evade just obligations to any person.

And this affiant further says that neither he nor any other officer of said company other than the defendant himself, as far as this affiant is informed and believes, had, or has had, any knowledge whatever of the transactions between the complainant and the defendant set forth in the complainant's bill until after the filing of said bill; and neither has any of them any such knowledge now except as informed by the proceedings in this cause, and by the said defendant, Ordway.

R. SNOWDEN ANDREWS.

Subscribed and sworn to before me this 3d day of March, A. D. 1875.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Ass't Clerk.

85 *Exceptions to def't's answer.—Filed Mar.* 3, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD *vs.* ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Exceptions taken by the above-named plaintiff to the answer of the defendant to the amended and supplemental bill for insufficiency.

The plaintiff excepts to the answer of the amended and supplemental bill—

1. For the reasons set forth in the exceptions filed Feb'y 9, '75, to the answer to the original bill.

2. For that the defendant has not set forth how many cubic feet of granite have been furnished to the United States under the de-
86 fendant's contract for furnishing granite to be used in the State Department building.

3. For that he has not set forth how much of the money paid to the defendant on account of the State Department contract has been paid on account of the full cost of the labor, tools, shops, sheds, materials, and insurance which by said contract the United States agreed to pay to the defendant; nor how much of it has been paid on account of the fifteen per centum of such cost; nor how much of it has been paid on account of the fifty-nine cents per cubic foot for the granite furnished.

4. For that he has not set forth what person or persons the United States have employed since said contract was entered into for the
87 purpose of determining the amount of the cost of said labor, tools, shops, sheds, materials, and insurance, as provided by said con-

tract, and has not stated either the name, address, or rank of such person or persons.

5. For that the defendant has not set forth whether the Westham Granite Company has now, or since January 1, 1872, has had any, and what, contracts with any persons, firms, or corporations for furnishing granite, and has not given the terms of said contracts, as to quantities, prices, and times of delivery.

6. For that the defendant has not set forth what amount of money, or its equivalent, the Westham Granite Company has received on
88 account of the State Department contract, the Centennial building contract, and each of the other contracts referred to in the 15th interrogatory; nor what quantity of granite said company has furnished under each of said contracts.

ROBERT G. SHEDD,
By STANTON & WORTHINGTON,
His Solicitors.

Stipulation, &c.—Filed Mar. 3, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Eq. docket 14.

By consent of the solicitors of the plaintiff, it is this 3d day of March, 1875, ordered that the preliminary injunction heretofore issued in this case be, and the same is hereby, modified so that the same shall
89 not restrain the payment of any money due the defendant on account of wages due the laborers employed in execution of the contract with the United States mentioned in this bill, and that money so due may be paid; this order, however, not *not* to apply to the fifteen per centum on the amount of such wages, the payment of which to the defendant is provided for in said contract.

By the court.

A. W.

We consent.

STANTON & WORTHINGTON,
Sol'rs for the Pl'ff.

Act incorporating Westham Granite Co.—Filed Mar. 3, 1875.

An act to incorporate the Westham Granite Company of Virginia, approved March 16th, 1874.

90 1. Be it enacted by the general assembly of Virginia, That J. Condit Smith, R. Snowden Andrews, Albert Ordway, John Pickering, and Samuel S. Green, together with such persons as they may associate with them, and their successors, be and they are hereby incorporated and created a body politic and corporate, under the name of the Westham Granite Company of Virginia, and as such shall have perpetual succession and a common seal, shall sue and be sued, and have all the rights and privileges which now ensure to corporations under the code of Virginia.

2. The capital stock of said corporation shall be three hundred thousand dollars, in shares of one hundred dollars each; and whenever

91 a majority of the stockholders shall so determine it may be increased to any sum not exceeding one million of dollars, likewise divided into shares of one hundred dollars each.

3. The corporation shall have power to hold land by any tenure to an extent not exceeding ten thousand acres; to quarry, cut, and transport granite, stone, slate, and other productions; to buy and sell merchandise upon obtaining license therefor, and to transact such other business as they may deem profitable; to construct and operate a railroad from their quarries in Chesterfield County to a point on James River, opposite Rocketts, or to the Richmond and Danville Railroad; to issue bonds and to secure the same by mortgage on the property of the
92 corporation, or any part thereof; to issue preferred stock; to issue bonds secured by mortgage convertible into preferred stock, or preferred stock convertible into bonds secured by mortgage, and to exercise all powers necessary to the enjoyment of the franchises and privileges herein granted.

4. This act shall be in force from its passage.

A copy.

(Signed) J. BELL BIGGER,
Clerk of House of Delegates & Keeper of the Rolls of Virginia.

MARCH 18TH, 1874.

92½ *Order sustaining exception to ans.—Filed*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD *vs.* ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

This cause coming on to be heard on complainant's exceptions to defendant's answers to the original and supplemental bills, and solicitors for complainant thereupon waiving the first and second exceptions to the answer to the original bill, and solicitors for the respective parties having argued the other exceptions filed on behalf of complainant as aforesaid, it is thereupon, this 16th day of April, 1875, ordered that said exceptions not waived as aforesaid be, and hereby are, sustained and allowed; and it is further ordered that within 20 days from the date of this decree defendant shall file a full answer in respect to the subject matter of said exceptions herein allowed.

By order of the court.

93 *Supplemental answer.—Filed May* 12, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD, COMPLAINANT, *vs.* ALBERT ORDWAY, DEFENDANT. } No. 4092. Eq. doc., 14.

The supplemental answer of the defendant, Albert Ordway, to the bill and supplemental and amended bill of the complainant, Robert G. Shedd.

In pursuance of the order of the court in the premises requiring this defendant to make a fuller and more specific answer to certain of the

interrogatories contained in the complainant's bill and amended and supplemental bill, this defendant says as follows:

1. For answer to the second interrogatory of the original bill this defendant says, that the amount paid by the United States on ac-
94 count of the said contract for furnishing granite for the new department building for the State, War, and Navy Department, is in all the sum of one million three hundred and ninety-two thousand one hundred and forty-two dollars and fifteen cents ($1,392,142.15), which was all paid to the Westham Granite Company or the firm of Andrews, Ordway and Green, or to this defendant for them. Of the said amount the sum of one million one hundred and forty-six thousand three hundred and ninety-three dollars and ninety-five cents ($1,146,393.95) has been paid by the government to the said parties on account of the item of labor, tools, shops, sheds, material, and insurance; and the sum
95 of seventy-two thousand six hundred and seventy-seven dollars and eighty-two cents ($72,667.82) on account of the granite furnished; and the sum of one hundred and seventy-three thousand and eighty dollars and thirty-eight cents ($173,080.38) on account of the fifteen (15) per centum mentioned in the contract. (But of the said last mentioned amount the sum of ninety-four thousand eight hundred and eighty-four dollars and twenty-nine cents ($94,884.29) was, in pursuance of contract, paid over by the State Department to Andrew Washburn for the cutting of said granite, leaving the sum of seventy-eight thousand one hundred and ninety-six dollars and nine cents ($78,196.09)
96 as the amount actually received on account of the said fifteen per centum by the firm of Andrews, Ordway and Green and the Westham Granite Company.)

And for further answer to the said second interrogatory the defendant herewith annexes a correct statement of the receipts and disbursements of the said firm of Andrews, Ordway and Green, and the Westham Granite Company, in the premises:

RECEIPTS.		DISBURSEMENTS.	
U. S., labor, material, &c., on contract	$1,146,393.95	Labor acc't	$392,499.73
From percentage	78,196.09	Expense acc't	62,267.06
Granite furnished U. S.	72,667.82	Discount & interest	33,368.43
Contract with the Western Union Telegraph Co.	147,272.37	Real estate acc't	8,810.10
Contract for Centennial building	105,000.00	Transportation & freight	39,510.85
Sundry sales of granite	16,364.01	Tool acc't	33,368.89
		Material	13,837.49
		Railroad expense	7,540.86
		Shop & sheds	4,880.41
		Teaming acc't	564.76
		Pay-rolls, material, &c., U. S. contract	1,146,393.95
	$1,565,894.24		$1,713,043.53

Excess of disbursements over receipts, $147,148.29.

97 2. For further answer to the sixteenth interrogatory appended to the amended and supplemental bill, this defendant says that the amount of granite furnished to the United States under the contract referred to with the United States, and the extension thereof, is about one hundred thousand cubic feet (100,000 ft.), for which the United States have paid $72,667.82, as already stated.

3. And for further answer to the fourth interrogatory of the original bill, this defendant says that during the period of the existence of the said contract with the United States, the government has had two superin-

tendents at the quarries of the said firm and company, namely, one E. W. Smith, for a few months, whose present residence is unknown
98 to this defendant, and Gen. George W. Randall, the present superintendent, whose residence is in Richmond, in the State of Virginia.

4. And for further answer to the third interrogatory of the original bill, the defendant says that the Westham Granite Company have had a contract for furnishing granite for the Centennial building in Philadelphia, whereof a copy is herewith inclosed, marked Exhibit C. B.

All or nearly all the granite contracted for in the said contract has been furnished, and the sum of one hundred and five thousand dollars ($105,000) received on account of said contract.

5. And for further answer to the third interrogatory of the original bill, this defendant says that he does not now know whether
99 there is any copy of the contract with the Western Union Telegraph Company, or what the terms thereof were. The amount received from said telegraph company was, as stated in the foregoing statement, the sum of $147,272.27. The said contract was completed about two years ago.

ALBERT ORDWAY.

I do solemnly swear that I have read the foregoing answer signed by me, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

ALBERT ORDWAY.

Subscribed and sworn to before me this seventh day of May, A. D. 1875.

[SEAL.] JOHN W. CARSON,
Notary Public.

100 *Exhibit C. B. to supplemental answer.—Filed May* 12, 1875.

This contract, made and entered into this fifteenth day of September, A. D. one thousand eight hundred and seventy-four, between the Westham Granite Company, of Virginia, of the first part, and Richard J. Dobbins, of the city of Philadelphia, builder, of the second part, witnesseth:

1st. That the said parties of the first part do hereby contract and engage with the said party of the second part as follows:

That in consideration of the payments hereinafter mentioned the parties of the first part hereby contract and agree with the said R. J.
101 Dobbins to furnish, delivered to him on Allison's Wharf, Skuylkill River, 27th ward, in the city of Philadelphia, at their own risk and expense, all the light-colored granite, cut, dressed, fitted, complete, ready to set, for contract No. 1, comprising the parts marked on drawings accompanying this contract, being the four pavillions of the Memorial Hall Centennial Building, in Fairmont Park, Philadelphia, said granite to be delivered in blocks or parts, in rotation, as required to be set, one-sixth of the whole amount in each month. The delivery of the first sixth portion is to be made by November 15th, 1874, and to complete the delivery of the whole amount by April 15th, 1875, each portion of which is to be satisfactory to the building committee and
102 in accordance with the plans and specifications and working-drawings prepared by H. J. Schwartzman, architect, &c., &c., &c.

2nd. Omitted.

3rd. That the party of the second part hereby contracts and agrees that for the full and entire completion of the conditions of the contract, to the satisfaction of the party of the second part and the building committee and architect, as aforesaid, and in consideration thereof, there shall be paid to the parties of the first part by the party of the second part the sum of one hundred and twenty-five thousand dollars, said sum to be paid in installments, as the work progresses. Ninety per cent. of the contract value of the granite furnished shall be paid
103 by the party of the second part, said payments to be made monthly after said delivery and acceptance, and the final payment of ten per cent. shall be made in three months from the time this contract shall be in all respects complied with by the parties of the first part.

4th and 5th omitted.

For the faithful performance of all which the said party of the first part has executed a bond, with a warrant of attorney to confess judgment, in the sum of twenty thousand dollars, bearing even date herewith.

In witness whereof the parties have hereunto set their hands and seals, to be binding upon the heirs, executors, and administrators of each party hereto, the day and year first above written.

(Signed) WESTHAM GRANITE COMPANY, OF VIRGINIA,
ALBERT ORDWAY,
Secretary.

(Signed) R. J. DOBBINS.

Witnesses at signing—
(Signed) A. G. RAPP.
M. A. WIST.

104 *Stipulation, &c.—Filed May 20, 1875.*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

It is agreed that the depositions for complainant in this case may be taken by James O. Clephane, examiner in chancery, in short-hand and afterwards transcribed, the depositions of each witness to be read over to him by the examiner after being so transcribed, whenever practicable, and alterations suggested by the witness to be made at the foot of the deposition before the witness signs it, unless made by consent of counsel in the body of the deposition.

STANTON & WORTHINGTON,
Solicitors for Complainant.
R. T. MERRICK,
M. F. MORRIS,
Sol. for Defendant.

105 *Replication.—Filed May 20, 1875.*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

The complainant joins issue upon the defendant's answers to the orig-

inal, amended, and supplemental bills in this case, and will hear the cause on bills, answers, and proofs.

STANTON & WORTHINGTON,
Solicitors for Compl't.

106 *Subpœna to Ordway as witness for compl't, May, 28, 1875.*

Supreme court of the District of Columbia.

SHEDD *vs.* ORDWAY. } No. 4092. Docket 14, equity.

The President of the United States to Albert Ordway:

You are hereby commanded to appear as witness for the complainant before James O. Clephane, examiner, at office of Stanton & Worthington, 637 F street, on the 29th day of May, 1875, at 11 o'clock a. m.

Witness D. K. Cartter, chief justice, &c.

R. J. MEIGS,
Clerk, &c.
By L. P. WILLIAMS,
Ass't Clerk, &c.

(Endorsement:)
Received May 28th.

ALBERT ORDWAY.

107 *Subpœna to Ordway as witness for compl't, May 29, 1875.*

Supreme court of the District of Columbia.

SHEDD *vs.* ORDWAY. } No. 4092. Docket 14, equity.

The President of the United States to Albert Ordway:

You are hereby commanded to appear as witness for the complainant before James O. Clephane, examiner, at office of Stanton and Worthington, 637 F street, on Thursday, the 3d day of June, 1875, at 11 o'clock a. m., and bring with you the partnership articles of Andrews, Ordway & Green, a copy of the agreement with Washburn referred to in your testimony, and the cash-books, journals, and ledgers of said firm and of the Westham Granite Company.

Witness D. K. Cartter, chief justice, &c.

R. J. MEIGS,
Clerk, &c.
By L. P. WILLIAMS,
Ass't Clerk, &c.

(Endorsement:)
Received May 29th.

ALBERT ORDWAY.

108 *Certificate of examiner in chancery.—Filed June* 4, 1875.

In the supreme court of the District of Columbia.

WASHINGTON, D. C., *June 3d*, 1875.

ROBERT G. SHEDD *vs.* ALBERT ORDWAY. } No. 4092. Equity docket, 14.

I certify that on Saturday, the 29th day of May, 1875, at the office of Stanton & Worthington, No. 637 F street, in this city, the defendant in this case, Albert Ordway, appeared pursuant to subpœna, and was examined as a witness in this case by counsel for the complainant; that during the examination the witness stated that certain books of the firm of Andrews, Ordway & Green, and of the Westham Granite Co., from which the statement of account contained in his supplementary answer in this case was principally made up, were at Richmond, Virginia; that at the close of the examination on that day counsel for the complainant requested the examiner to adjourn the commission until Thursday, the 3d day of June, at 11 o'clock a. m., and requested the witness to appear at that time for further examination; and requested the witness to bring with him the articles of copartnership between himself and the other members of the firm of Andrews, Ordway & Green, a copy of the agreement with Andrew Washburn referred to in the witness's testimony, and the cash books, journals and ledgers of that firm, and of the Westham Granite Co.

I further certify that the defendant made no objection either to the time or place fixed for his further examination, and that the commission was accordingly adjourned to meet at the same place on Thursday, June 3d, at 11 a. m.

I further certify that the commission met pursuant to adjournment at the office of Stanton & Worthington, No. 637 F street, at 11 o'clock, on Thursday, June 3d. Present, only Mr. Worthington, of counsel for complainant. That after waiting more than half an hour, neither the defendant nor his counsel appearing, at the request of counsel for the complainant the commission was adjourned to meet at the same place at the same hour on Saturday, June 5th, 1875.

I further certify that during his examination the witness stated that of the profits on the cutting of the stone for the south wing of the State Department there was paid to Mr. Andrew Washburn, or his assignee, the sum of $94,000; that the witness was then asked if he agreed to give this money to Mr. Washburn without any consideration. He declined to answer the question. He was then asked why he declined to answer the question, and he replied, "I decline to answer that."

JAS. O. CLEPHANE,
Examiner in Chancery.

109 *Motion for attachment against def't.—Filed June* 4, 1875.

In the supreme court of the District of Columbia, June 3, 1875.

ROBERT G. SHEDD *vs.* ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

The complainant moves the court for an attachment against the defendant:

1. Because although, pursuant to subpœna, he attended before the

examiner, Mr. James O. Clephane, at the office of complainant's solicitors, 637 F street, on Saturday last, and was sworn and partly examined as a witness in the case, and a regular adjournment was had till Thursday, June 3d, at eleven o'clock, at the same place, to which he made no objection, and he was requested to appear at the adjourned session and produce certain books and papers which he said were then at his office at Richmond, Virginia, yet he failed to attend at the adjourned session and did not produce any of said books and papers, and did not send any excuse for his absence.

2. Because during his examination on Saturday last he admitted that there has been paid to one Andrew Washburn and his assignee, of the profits of the State Department contract, the sum of over $94,000, but refused to answer the question whether there was any consideration for this payment, and refused to give any reason for not answering said question.

STANTON & WORTHINGTON,
Solicitors for Complainant.

To Messrs. MERRICK & MORRIS,
Solicitors for Defendant:

You will please take notice that we shall call up the above motion at the opening of the court on Friday, June 4th, 1875, or as soon thereafter as we can be heard. In support of the motion we shall pro-
110 duce the certificate of the examiner, Mr. Clephane, as to the defendant's failure to attend and refusal to answer above set forth.

Please take notice also that we shall object to the consideration by the court of your pending motion for a dissolution of the injunction heretofore granted in this case until the defendant shall have submitted himself and his books for further examination.

STANTON & WORTHINGTON,
Solicitors for Complainant.

Notice of motion to take depositions at Boston.—Filed June 15, 1875.

In the supreme court of the District of Columbia.

ROBERT SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Please take notice that on Friday, the 11th day of June, 1875, at the opening of the court, or as soon thereafter as counsel can be heard, we shall move the court to appoint a special examiner to take depositions on behalf of the complainant orally at the city of Boston, in the State of Massachusetts; and that we shall suggest to the court as a fit person to be so appointed Mr. Winslow Warren, an United States commissioner, whose office is at 42 Court street, Boston.

STANTON & WORTHINGTON,
Solicitors for Complainant.

To Messrs. MERRICK & MORRIS,
Solicitors for Defendant.

Service acknowledged this 9th day of June, A. D. 1875.
MERRICK & MORRIS,
Per M. F. MORRIS.

111 *Objection to taking testimony orally beyond jurisdiction.—Filed June 15, 1875.*

Supreme court. In equity.

SHEDD *vs.* ORDWAY. } No. 4092.

The defendant, by his counsel, R. T. Merrick, in response to the motion of complainant to appoint a special examiner to take testimony orally in the city of Boston, in the above-written cause, objects to said motion, and insists that testimony to be taken at a point beyond the jurisdiction of this court should be under a commission, and issued on interrogatories filed in the clerk's office of this court.

June 15th.

R. T. MERRICK,
For Defendant.

Appeal.—Filed June 15, 1875.

An appeal is taken from the order passed on the motion to appoint special examiner to take testimony in Boston.

R. T. MERRICK.

Order appointing special examiner.—Filed June 15, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD *vs.* ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Upon motion of the plaintiff's solicitors, and after argument thereon by the counsel for the plaintiff and the defendant, respectively, it is this 14th day of June, 1875, ordered that Warren Winslow, esq., an United States commissioner at Boston, be, and he hereby is, appointed a special examiner to take testimony orally on behalf of the plaintiff in this case at the city of Boston, in the State of Massachusetts, and to transmit the depositions, when taken, to the clerk of this court.

By the court.

A. W.

Appeal to general term from this order noted by defendant.

112 *Notice of motion to enlarge time for taking testimony.—Filed Jun 18, 1875.*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD *vs.* ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Please take notice that on Friday, the 18th inst., at the opening of the court, or as soon, &c., we shall move the court to enlarge the time for

taking testimony in this case, on both sides, to and including July 20th, 1875.

STANTON & WORTHINGTON,
Solicitors for Plaintiff.

To Messrs. MERRICK & MORRIS,
Solicitors for Defendant.

I delivered a copy of the above notice to enlarge time for taking testimony in Shedd vs. Ordway at the office of Merrick & Morris, on the 16th day of June, A. D. 1875.

CHAS. F. WHITTLESEY.

Sworn to and subscribed before me this 16th day of June, 1875.
[SEAL.] J. C. HEALD,
Notary Public.

Order enlarging time for taking testimony.—Filed June 18, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Upon motion of the plaintiff's solicitors it is, this 18th day of June, 1875, ordered that the time for taking testimony in this case on both sides be enlarged to and including the 20th day of July, 1875.

By the court.

A. W.

113 *Stipulation as to injunction & receiver.—Filed July* 7, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD, COMPLAINANT,
vs.
ALBERT G. ORDWAY, DEFENDANT. } No. 4092. Equity.

It is hereby agreed between the parties hereto, by their respective solicitors, that the injunction issued in the above-entitled cause be modified in such manner that it shall not apply to any money due on account of granite furnished under the contract with the United States, nor to five-eighths of the 15 per cent. on the cutting.

It is further agreed that three-eighths of the fifteen per cent. mentioned in the contract shall be paid over to R. T. Merrick, and retained by him to await the result of the cause. Also, that three-eighths of the amount of money already in the hands of said R. T. Merrick shall be retained in like manner for like purpose.

It is understood and agreed that the complainant does not hereby waive any rights that he may claim to have the whole of the fifteen per cent. applied to the payment of his debt.

STANTON & WORTHINGTON,
Solicitors for Complainant.
MERRICK & MORRIS,
Solicitors for Defendant.

114 *Order modifying injunction & appointing R. T. Merrick receiver.—Filed July 7, 1875.*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Upon motion of counsel for the defendant, and in accordance with the stipulation of the counsel for the plaintiff and defendant, respectively, this day filed in this cause, it is, this 7th day of July, 1875, ordered that the injunction in this case be and it hereby is modified so as not to apply to any money due or to become due on account of granite furnished under defendant's contract with the United States, nor to five-eights of the money due or to become due on account of the fifteen per cent. referred to in the contract. And ordered further, that the remaining three-eighths of said fifteen per cent. shall be collected by Richard T. Merrick, esq., and retained by him as a receiver to await the result of the cause; and if already received by him in part, such part shall also be so retained from this date.

By the court.

A. W.

115 *Order appointing special examiner to take depositions.—Filed July 9, 1875.*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Upon motion of the plaintiff's solicitors, and after argument thereon by the counsel for the plaintiff and the defendant, respectively, it is, this 14th day of June, 1875, ordered that Warren Winslow, esq., a United States commissioner at Boston, be and he hereby is appointed a special examiner to take testimony orally or on behalf of the plaintiff in this case, at the city of Boston, in the State of Massachusetts, and to transmit the depositions when taken to the clerk of the court.

By the court.

A. W.

A true copy.
Test:

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

116 *Notice of the taking of depositions.*

In the supreme court of the District of Columbia. June 15th 1875.

ROBERT G. SHEDD
v.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Please take notice that we shall take depositions orally on behalf of

the plaintiff in this case before Warren Winslow, esquire, the special examiner this day appointed by the court for the purpose, at his office, No. 42 Court street, Boston, Massachusetts, commencing at eleven o'clock a. m. on Wednesday, the 23 day of June, 1875, and continuing from day to day as the examiner shall direct.

If you have any objection to the day named please specify a day that will be more convenient, and we shall endeavor to proceed on that day.

STANTON & WORTHINGTON,
Solicitors for Plaintiff.

117 To Messrs. MERRICK and MORRIS,
Solicitors for Defendant.

I served a copy of the above notice on Mr. Morris, of defendant's counsel, at his office, at 2½ o'clock p. m. on Tuesday, June 15th, 1875.

Mr. Morris read the notice and retained the copy but declined to acknowledge service. I asked him if he had any objections to the day specified in the notice. He replied that he objected to all days, and he declined to state whether he had any objection to that particular day, although I again asked him the question.

ALBERT HARPER.

Subscribed and sworn to before me this 15th day of June, 1875.
[NOTARIAL SEAL.] J. C. HEALD,
Notary Public.

118 In the supreme court of the District of Columbia.

ROBERT G. SHEDD } No. 4092. Eq. doc., 14.
v.
ALBERT ORDWAY.

It is this 17th day of June, 1875, ordered that the examination of witnesses on behalf of the complainant before me as special examiner in this case shall be had at my office, No. 42 Court street, Boston, Massachusetts, commencing at eleven o'clock a. m. on Wednesday, the 23rd day of June, 1875, and that the complainant give the defendant three days' notice thereof.

WINSLOW WARREN,
Special Examiner.

To Messrs. MERRICK and MORRIS,
Solicitors for the Defendant:

Please to take notice that in accordance with the above order
119 of the special examiner in this case, we shall take depositions before him at his office, No. 42 Court street, Boston, Massachusetts, commencing at eleven (11) o'clock a. m. on Wednesday next, and proceeding thereafter as the examiner shall direct.

STANTON AND WORTHINGTON,
Solicitors for Plaintiff.

I handed a copy of the above order and notice to Mr. Morris, of defendant's counsel, at his office No. F street, Washington, D. C., at 11.30 o'clock a. m. this 19th day of June, 1875.

ALBERT HARPER.

Sworn to and subscribed before me this 19th day of June, 1875.
[NOTARIAL SEAL.] J. C. HEALD,
Notary Public.

120 Supreme court of the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Equity docket, 14.

UNITED STATES OF AMERICA,
District of Massachusetts:

On the 23rd, 24th, and 25th days of June, A. D. 1875, at Boston, in said district of Massachusetts, before me, Winslow Warren, a commissioner in and for the district of Massachusetts to take affidavits and bail in civil causes depending in the courts of the United States, appointed by the circuit court of the United States for the first circuit under the acts of Congress in such case made and provided, and special examiner in this case, personally appeared John T. Goddard, Robert G. Shedd, W. C. Greene, and George F. Ordway, witnesses for the complainant in a certain suit depending in the supreme court of the District of Columbia, wherein Robert G. Shedd is complainant and
121 Albert Ordway respondent; and the said witnesses being by me first carefully examined, and cautioned and sworn to testify the whole truth relative to the issue, did depose and say, in answer to interrogatories proposed to them by A. S. Worthington, esq., of counsel for complainant, as follows, viz:

Supreme court for the District of Columbia.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } In equity. No. 4092.

JUNE 23RD, 1875—11 a. m.

Personally appeared JOHN T. GODDARD, a witness for complainant, and being first duly sworn, in answer to interrogatories proposed by A. S. Worthington, esq., of counsel for complainant, testified as follows, viz:

122 Ans. My name is John T. Goddard; age, thirty-four. I am a physician; reside in New York City. I am acquainted with Mr. Shedd, the plaintiff in this case; his wife was my cousin; I know Albert Ordway, the defendant. I met him first the last of February, 1874, in New York City, about Mr. Shedd's business. Mr. Shedd engaged me to act as his agent in the matter. Mr. Aaron F. Perry, of Cincinnati, a lawyer, was with me. We went to Washington first, and then to Richmond, to meet Mr. Ordway, but not finding him returned to Washington; after sending several telegrams, we went to New York and met him there at the Metropolitan Hotel; told him what our business was, referring to Mr. Shedd's claim against Ordway for thirty-eight thousand five hundred dollars, and interest. We told him we desired to have
123 the money safely secured, demanded payment of a note then due for five thousand dollars, and back interest amounting to about three thousand, and a lien upon his receipts from the government to secure the money.

He was very plausible, and expressed an earnest desire to settle the matter as soon as possible. He said that the stock in his firm had never been divided; that it would be divided almost immediately, and that he was to have a third share in a granite quarry on which there was a

government contract; he said he would hypothecate his share of stock to Mr. Shedd as security, and after some reluctance promised to do his utmost to pay the back interest. We offered to take notes from
124 him payable annually or semi-annually, trying to convince him it was for his interest to secure the money; he said it would take three weeks to settle the affairs of his firm, that he would then send us to come on from Cincinnati and arrange everything satisfactorily; he stated that he was negotiating a contract with the Union Telegraph Company for granite for their new building, which would bring in at least one hundred and forty-seven thousand dollars. We were surprised to see him in Washington the next day, as he had previously telegraphed us he must remain in New York all the week. He then told me that he had finished making out his contract with the telegraph company, and that it would bring in two hundred and forty thousand dollars.
125 What I mean above by saying we wanted a lien upon his receipts from government is, we wanted him to arrange so that Mr. Shedd could receive his instalments directly from government.

Neither at that interview, nor at any other time until May following, did Ordway inform me that the firm of Andrews, Ordway and Green had been or was about to be merged in a body corporate.

In three weeks he wrote me he wasn't ready, and wanted more time; that letter and the other letters I received from Mr. Ordway, so far as I have been able to find them, I sent some time ago to Mr. Shedd's counsel at Washington. At the end of six weeks he wrote in reply to letter from me that his firm affairs were not settled as he had ex-
126 pected. I started for Richmond May 13. Mr. Ordway said he had great delay in settling up the books of the firm, when I saw him in Richmond, where I found great difficulty in finding him.

He also gave as excuse for his delay that the mother-in-law of his partner Andrews was dead, and that Andrews had been obliged to be away superintending her burial and looking after his wife. He was very plausible, and again expressed the utmost anxiety to settle things fairly and squarely. He now said when the affairs were settled he was to have one-sixth of the quarry, which would be worth at least forty thousand dollars; this he promised to hypothecate to Mr. Shedd, and then
127 definitely promised all back interest immediately. The reason he gave then and before for not allowing Mr. Shedd to have the money paid directly by the government in instalments was because his partners would not consent to it; that all receipts from government contract & other contract had to be turned into the firm and then divided, and such a thing as paying to anybody but Ordway would not be consented to by the government.

He further told me for the first time that they were changing their firm into a corporation; that a rich partner was coming in, J. Condit Smith, of Buffalo, who was buying his stock, dollar for dollar. He said that the quarry and its plant cost them three hundred thousand
128 dollars, and that the stock in it could be sold at par any day. He wanted three weeks further.

About June 10th, he wrote for a few days more; the last week in June, Mr. Perry met him in Washington; he then desired to the first of August as his limit. The first week in August I went to Richmond again; his reason for delay this time was because he had been busy in Washington.

He said he had great trouble in getting Congress to pass an appropriation for money to work the quarry, as those in the interest of Maine quarries had opposed him; that he had been obliged to give up every-

thing to that, and only the day before had commenced working on stone; he also said that one of his partners had been at Saratoga for a fortnight.

The 1st of September, he wrote that his partners had been en-
129 gaged in politics and that one had fought a duel, and gave that as an excuse for his delay in settling. He repeated the duel excuse in a subsequent letter written in September.

The 1st of October I wrote him, stating that Mr. Shedd and I would be in Washington immediately; he replied, and definitely appointed the 3rd day of November for a meeting at Washington, and requested me and Mr. Shedd to meet him there at that time, and promised to be ready to make a settlement at that time. I may say here that down to August 1, 1874, I lived in Cincinnati, and about that time removed to New York. The appointment was at the Arlington House, November 3rd.

129½ Mr. Shedd was unwell, and I went to Washington alone at the appointed time. I arrived there the evening of November 2nd; on the 3rd, Ordway did not appear. The forenoon of the 4th, I telegraphed to him in Richmond but received no reply; in the afternoon I telegraphed to his bookkeeper, who replied that Ordway was in Washington; on coming out from my dinner at seven o'clock, I found his name had been registered upon the book a few minutes before, and that he had already gone out; the clerk told me he had informed Ordway of my desire to see him. The telegraph boy told me that he had gone to Ordway in the office and informed him of my two telegrams sent to Richmond. I remained in the office until near midnight, leaving
130 only once or twice to go to my room for a few moments, and left a card in the box for him. I sent to his room several times to see if he was in.

By a strange coincidence I found that his room was next to mine, with a door between. I discovered this by looking at the register of the hotel.

After I was in bed and asleep I was awakened by hearing him come in with a friend. I had gone to bed about midnight. In the morning I was awakened by hearing them talking and dressing in his room. I heard him tell the negro waiter, for whom he rang, to bring him a cocktail, to come up and carry down his traps, as he was going to take the
131 train to Philadelphia. I also heard him say, in discussing some contemplated cabinet change, that it made little difference to him, as he was fixed all right for three years anyhow.

I dressed myself and got down stairs in time to meet him on the outside steps of the hotel as he was about taking the omnibus for the train. He seemed surprised and confused at meeting me; said he couldn't stop, he had to take a train in five minutes. I told him two minutes would answer my purpose, and that I must have; that I was in Washington by his appointment, and wanted to understand definitely then and there whether he was prepared to settle as he had promised. He said
132 he was not quite ready, but should be in two or three days, or a a week at farthest. He then expressed a desire to talk further with me, I having suggested that I proposed to telegraph to Mr. Perry, and said he would return from Philadelphia to Washington that afternoon, and see me in the evening. I said, "am I to understand that you make a definite appointment for this evening?" He looked at me, as I thought, somewhat queerly, and said that he did.

He did not appear in the evening, but after eleven o'clock I received a telegram, which I here produce, saying that he had to go to New York, and would write to me at Cincinnati when the settlement was finished (the telegram referred to is marked Exhibit A, T. G. 1, and hereto

annexed). I telegraphed to Mr. Perry, at Cincinnati, after re-
133 ceiving this telegram from Mr. Ordway. Mr. Perry came on, and the business was put in the hands of Messrs. Stanton and Worthington in Washington.

About the last of November I returned to Washington, accompanied by Mr. Shedd, at the request of Messrs. Stanton and Worthington, as Ordway was expected there early in December, and we wished to meet him and either obtain an amicable settlement with him or file a bill in equity and have him enjoined from collecting money on the State Department contract in time to prevent him from receiving the amount due for November; but, evidently anticipating this, Ordway came to Washington several days earlier than usual, and obtained the
134 money and went away again before we learned he was in town.

I had no further dealings with Ordway; have never seen him since that time.

When I was in Richmond in May and August I went to his house several times, and found that his house was large and handsomely furnished, and he seemed to be living in luxury and style; he saw me looking about his parlors, and took pains to volunteer the information that his house was heavily mortgaged.

JOHN T. GODDARD.

JUNE 2ND.

John T. Goddard being recalled, testified as follows in answer to interrogatories by :

Int. 1st. Upon examination of Ordway's letter to you of April
135 1, 1874, in evidence, which I now show you, what is your recollection as to Ordway's first informing you of the proposed incorporation of the Western Granite Company?

Ans. He refers to it in that letter; that letter was the first intimation of any such thing I received, and he first verbally mentioned it to me in May.

I remember I was surprised when I read that letter. In the letter he referred to it as if it had been discussed between us before, which is entirely wrong, as both Mr. Perry and myself were much surprised at this our first information of any incorporation.

JOHN T. GODDARD.

136 EXHIBIT A.—T. G. 1.

THE WESTERN UNION TELEGRAPH COMPANY.

The rules of this company require that all messages received for transmission shall be written on the message blanks of the company, under and subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following message.

WILLIAM ORTON, *Pres't*,
GEO. H. MUMFORD, *Sec'y*,
New York.

THOS. T. ECKERT, *Gen'l Sup't*,
New York.

Dated Phil'a, Pa., Nov. 5, 1874.
Received at , 6.50.

To Dr. J. T. GODDARD,
The Arlington :

I have to go to New York. Will write you at Cincinnati soon as settlement is finished.

ALBERT ORDWAY.

16 paid.

☞ This telegram has just been received at the office in Arlington Hotel, Wash'n, D. C., where any reply should be sent.
Direct wires.

137 JUNE 23, 1875.

ROBERT G. SHEDD, being first duly sworn, in answer to interrogatories proposed by A. S. Worthington, esq., of counsel for complainant, testified as follows, viz:

Ans. My name is Robert G. Shedd; age, thirty-nine; residence, Groton, Mass. I am in no particular business; was formerly in the wholesale millinery business, but retired from it. I have known the defendant, Albert Ordway, for twenty years; he first received money from me through his cousin, George F. Ordway, about April 1, 1871; that was $10,000.

I received a note from him, indorsed by him, for that amount.
138 George F. Ordway then resided in Dorchester, now part of Boston, Mass., and I resided at Groton. Geo. F. and Albert had been engaged in money transactions together since about April 1st, but I have no knowledge of any partnership between them until August, 1871, when their partnership name was Albert Ordway & Co. Early in 1871 I had considerable money in my hands for investment for other persons.

Geo. F. Ordway was in business here in Boston and acted as my agent in collecting dividends and interest, and the money so collected remained to my credit on the books of the firm of Geo. F. Ordway & Co., composed then of Geo. F. Ordway and J. M. Fellows. He gave me satisfactory security for the money which came into his hands.
139 As near as I can recollect, in July, 1871, Geo. F. Ordway introduced to my notice a granite contract with the government to build the State, War, and Navy Department buildings in Washington. Albert Ordway was the owner in whole or in part of the James River Granite Quarry, so called, from which it was proposed that the stone for the superstructure of these buildings was to be taken, and it was stated to me by Geo. F. that Albert was endeavoring to secure this contract from this quarry.

It was hinted to me then that money would be wanted to carry on the contract and that it would be a good investment. Geo. F. went to Richmond in July and returned the same month, and brought back
140 with him the latter part of July, and I am very positive he exhibited to me a power of attorney from Albert Ordway, which I now produce, giving him full power to negotiate with me. The power of attorney was in the handwriting of Geo. F., and signed by Albert Ordway. (The same is annexed marked Exhibit A, R. G. S.)

I saw Geo. F. Ordway at his house, in Dorchester, immediately after his return with this power—he was not well and sent for me to come. I was out there two or three hours, stayed to dinner—he gave me a full history of his journey; told me he had examined Albert's quarry, and talked with Mr. Mullett about contracts and told me what the profits would be. I don't recollect the sum, but it was very large. He
141 said the government would pay all expenses and fifteen per cent. profit, and Albert would only have to superintend this business, and furnish the stone and receive the profits. I was to furnish—that is, I agreed at that time to furnish—fifty thousand dollars for the purpose of developing the quarry—that is, furnishing the means to carry on the contract, and I was to receive my security in the contract itself in some way. The money I advanced was to be paid back from the profits

		" Nathan Davis, semi-annual int. on mort., to July 21	84 00
		20. Beefsteak, 1.10; fish, 36; silk, 10	1 56
		21. Berries, 30; tripe, 24	54
		24. Katie, on a/c	5 00
		25. P. O. stamps, 48; berries, 30	78
151	July	26. Tickets to Boston	10 20
		27. Books, 1.00; peaches, 30; ribbon, 1.20	2 50
July		" Fans, 24; needles, 21; blood, 25	70
		28. C. beef, 84; veal, 69; Ed. Fitch on a/c (paid L. W. 3.00)	4 53
		" Berries, 30; exp. on letter, 34; 27053	64
		29. Blood, 25	25
			$270 80
1871.			
August		1. M. H. Shattuck on a/c	50 00
		" Mis., 50	50
		Miss Torrey in full to Aug. 4	4 25
		2. Katie Murray on a/c	20 00
		" Dr. Spaulding in full to	68 50
		3. Fare to Poultney, Vt	18 30
		Waiters, 1.00; washing, 1.75	2 75
		Horse hire, 1.25; pants, 8.00; mis., 3.25	12 50
		17. Fare to Keene	7 70
		Board at Rutland	7 50
		Waiters and porters, 1.75; carriage, 1.00	2 75
		Cutting hair, &c., 45; washing, 1.15	1 60
		Dr. Brick, 75; Dr. Carpenter, 5.00	5 75
		Am't carried forward	$202 90
152		Am't br't forward	202 90
	Aug.	17. Mis., 50; pectoral, 1.00; telegrams, 69	2 19
		Board at Cheshire House	51 40
		Fare home, 4.50; Hunt, 25; 26044	4 75
		Board at Poultney; 32144	61 00
			$321 44
1871.			
September		1. Mrs. Paine, 1.50; vases, 2.00	3 50
		" 3 y'ds cott. flan., 1.13; peaches, 25	1 38
		" Fares, &c., 30; mis. while at K, 6.03	6 33
		2. M. H. Shattuck on a/c	25 00
		4. Beefsteak, 81; tripe, 26	1 02
		5. " C. A. D., 49; eggs, 28 & 25	1 02
		" Mrs. Allen in full for services	29 00
		" Miss Torrey to date	5 00
		" Paid for wire mattress, 20.00	20 00
		" Mrs. Paine, 64 & 54; berries, &c., 20; 7363	1 38
		8. Fish, 35; exp's, 44; 3½ butter, 1.12	1 91
		14. Crackers, 1.13; hulled corn, 10	1 23
		" Weston, painting cemetery fence, 7777	1 00
		16. Chas. Blood, subscription for Campbell	5 00
		19. Jas. Russell	5 00

		" Paid Williams for Ed. Fitch	8 00
		Am't forward	$95 87
153		Am't br't forward	95 87
	Sept. 20.	Parkhurst 14 lbs. butter, @ 40 c'ts (to date) 10147	5 60
		4 butter, 1.60; eggs, 91	2 50
		6⅛ " 1.96	1 96
			$105 94

These entries were made by me at the time of the transactions referred to.

By reference to my expenses in July, I find that I came to Boston on the 26th of July; remained here until the next day. I know that I was at home on the 28th by my marketing bills paid on that day. It must have been on the 26th or 27th of July that I had the conversation with George F. Ordway, when I agreed to advance fifty thousand dollars. I find from this memorandum that I went to Poultney on the 3d of August, and left on the 17th, and it was between these two dates that George F. Ordway came to see me, as already stated.

ROBERT G. SHEDD.

154 EXHIBIT A.—R. G. S.

RICHMOND, *July 20th*, 1871.

Know all men by these presents that I, Albert Ordway, of Richmond, in the State of Virginia, have made, constituted, and appointed, and by these presents do make, constitute, and appoint George F. Ordway, of Boston, Massachusetts, my true and lawful attorney for me and in my name, place, and stead, to bind me to any engagement of whatever nature. Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intent and purposes as I might or could do if personally pres-
155 ent, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal this twentieth day of July, in the year one thousand eight hundred and seventy-one.

ALBERT ORDWAY. [SEAL.]

Executed and delivered in presence of—
N. DAVIDSON.

I, Albert Ordway, commission merchant, now living in Richmond, Virginia, in consideration of the past and present services rendered me by George F. Ordway, of Boston, Massachusetts, do hereby promise and agree with the said George F. Ordway, on this twentieth day
156 of July eighteen hundred and seventy-one, that I will not endorse any note, deed, or paper of any kind outside of my legitimate business without first obtaining the assent of the said George F. Ordway. I further agree that I will at all times place any and all of my business books, letters, accounts, and anything of whatever nature connected with my business at his disposal.

I hereby agree that I will aid him to the utmost of my ability to ascertain at any time my business and personal liabilities and also my business and personal assets, and will also place full and unlimited confidence in the said George F. Ordway so that in case of my death
157 he can act intelligently in the settlement of my estate.

I also agree to appoint the said George F. Ordway as executor of my will, and as far as is possible I do hereby appoint him from this date as my executor.

ALBERT ORDWAY. [SEAL.]

Signed and sealed in presence of—
N. DAVIDSON.

158 JUNE 23, 1875.

WILLIAM C. GREENE, being first duly sworn, in answer to interrogatories proposed by A. S. Worthington, esq., of counsel for complainant, testified as follows, viz:

Ans. My name is William C. Greene; counsellor at law; reside at Newton, Mass.; age, forty-five. I know the plaintiff in this case; have known him since 1870. I know Albert Ordway, the defendant; have known him since 1872.

I was retained by Mr. Shedd in this matter in suit in December, 1871; had nothing to do with it during the winter except to consult as to its situation & prospects. In April, 1872, under instructions from
159 Mr. Shedd I went to Richmond to see Albert Ordway as to the investments which had been made by Mr. Shedd in the developement of James River Granite Quarry for the government; at that time I knew of no other investment until I first learned of it from Mr. Albert Ordway and Samuel S. Green, his partner. I took a complete power of attorney from Mr. Shedd to do anything and everything in regard to the obtaining securities of every nature to secure Mr. Shedd in the investment which he had made.

I found Ordway in Richmond, saw him at his office, introduced myself, and stated my business; my first remark to him was, "I came down here to fight, but if you are willing I will smoke the pipe of
160 peace," then I told him that I had made diligent inquiry in the city concerning him & his character. I found some represented him extremely well & others represented him to be a smart, dishonest man; from his appearance I preferred to believe the former. I wished him to tell me what he had invested Mr. Shedd's money in; he said he would show me in the afternoon; he got a barouche, drove me across from Richmond to the James River Quarry, & there, he said, from the developement of that quarry we were enabled to get our contract; returning from there, we drove to his office adjoining the quarry where I was introduced to Mr. Green, who had just come from Baltimore with a large sum of money which was in some way to be connected with
161 Shedd's investment in the government contract.

Mr. Ordway then informed me that the first sums received from Shedd, which I now remember to be about $5,000, he had thought had been sunk in the James River granite quarry, but it had not, fortunately, for by the granite of that quarry they obtained the government contract; they then both interested themselves in showing me the character of the stone, which they stated Mullett had himself personally examined.

I immediately proposed after their conversation, or rather the conversation of Ordway in the presence of his partner Green & myself, that

if, as he had laid out, it was a "soft" contract—that was the term
162 they used—to avoid all risks, as Shedd was sick & I thought dying, it would be better to give him some written security, by which he could have a lien on the government contract. Albert proposed at first to give me his personal bond, but as, upon examination, I had discovered that he had no property in his own name, I declined that. This conversation in regard to the bond was with Ordway alone, no one else being present. The other conversation referred to above was in presence of Mr. Samuel S. Green.

We delayed further conversation until he, Albert, should meet me at my room at the hotel, Ford's Hotel, where we held several interviews. The gist of our conversation at all times being how Shedd should be secured for the investments which he had made towards the government
163 contract. There was no denial by Mr. Ordway, in regard to it, that Shedd had invested money to develope & secure the government contract & that he was to be reimbursed from the receipts of the contract, from the profits which Ordway represented was the receipts paid on each month's service of about fifteen per cent. over & above the absolute expenses paid, all of which expenses the government paid themselves.

I made many suggestions & finally I embodied in a memorandum just what I would be satisfied with under the circumstances, which should be copied by Ordway, signed & forwarded to me, & that I then should draw up such a paper as would secure Mr. Shedd the best that could be done as far as possible under the circumstances. I suggested a
164 direct lien of some kind, an assignment of part interest, a bond secured by outside parties of worth. I also endeavored to get him to consent to have the government (as Mr. Shedd had invested for the interest of the government) to recognize his investment by a division of the receipts directly to him.

He met me in each instance with sufficient objections as to the manner of doing this, first by showing me from the government contract that many of the suggestions would make void the government contract if adopted by him. He assured me that no one had an interest in the government contract by any liens, assignments or deeds, & that the only interest held was certain papers given by him to Lockwood
165 & Farrar & also to Green & Andrews, which he said were held only on his personal honor; that the government contract was made with him & him alone.

We finally agreed upon the paper which I suggested, which was sent to me at Boston about thirty days afterwards. I then drew up the paper, the instrument upon which in part this bill in equity is brought, & sent it to him for his signature, which he held for some time. May 29, 1872, as appears by his written letter in answer to mine of May 16, he forwarded the instrument signed with his enclosure of May 29, 1872, herewith annexed & marked Exhibit A, W. C. G, which is his letter & in his own proper handwriting. As requested in that letter, I forwarded him a duplicate, after copying it, erasing the words
466 "joint contractor," as requested, & at the same time delivered to him five hundred shares of the James River granite stock, which, as attorney for Robert G. Shedd, I was to transfer to him, & which entered into the bond as a consideration for the receipts of the profits from the government contract.

From Washington I received his receipt for the same, June 7, 1872, as appears by his own letter, herewith filed, marked Exhibit B, W. C. G.

He was then attempting some negotiations with Andrews& Green as to the James River quarry, & he desired me to transfer the stock in blank before I sent my bond, but being little suspicious of him, I concluded to hold my stock until the bond had been returned & signed & I had forwarded notice to Mullett.

167 Prior to that, viz, May 13, 1872, he was extremely anxious to get the transfer of the James River granite stock to Williams & Farrar, but as he had not as yet signed the bond, I made no reply to him until the 16th of May. His letter of May 13, 1872, I herewith annex, marked Exhibit C, W. C. G.

After the bond had been signed, & before the stock had been returned to Ordway, I received his letter of June 18, 1872, herewith annexed, marked Exhibit D, W. C. G.

Part of the stock, five hundred shares, I endorsed to Ordway at the time of the receipt of June 7, 1872, in evidence, as appears by Exhibit B to my deposition; the balance, three hundred & thirty-three shares, I sent in answer to his of June 18th, on or before July 2, 1872,

168 as will appear by his two letters, one marked Exhibit D, heretofore annexed, & the other marked Exhibit E, W. C. G, & hereto annexed. With his receipt of June 7, marked Exhibit B, W. C. G., I received his letter of June 7, 1872, hereto annexed, marked Exhibit F, W. C. G.

The transfer to Williams & Farrar was made so as to clear them from every contingent interest which they might possibly have in the government contract, & their interest was to be transferred absolutely and entirely to Mr. Shedd; this Albert Ordway stated to me while I was at Richmond in April, 1872, and afterwards wrote to me, as will appear by Exhibit C. This was done, & was so intended & expressed by Ordway to me, to remove all interest adverse to Shedd's, & which claim of

169 Lockwood & Farrar he represented to be the only matter which in any way conflicted with Shedd's right to three-eighths of the fifteen per cent. profit. The other interests of Andrews & Green relied solely on his sense of honor.

It was our understanding, expressed by Albert Ordway to me, that the profits as above mentioned should be divided with Shedd in proportion of three-eighths of the entire receipts from the government as they were received. I applied accordingly for Mr. Shedd as soon as I learned that the government paid this 15 per cent. monthly, which I did accidentally by letter of Albert Ordway when I was dunning him for the payment of an individual note—he gave that as an excuse, that the

170 government paid him monthly & when due he would pay me. I afterwards confirmed the information through Mr. G. F. Ordway, & then began a correspondence.

I wrote to him informing him that I had learned that the government paid monthly, & demanded payment for Shedd, to which he made a reply, and among other things said he referred to a division of profits of his partners. I told him it was not so understood, & then informed him that if it referred to partnership profits that was to be divided every six months, as will appear by my press-copy of September 4, 1872, hereto annexed, marked Exhibit G, W. C. G., my object was to require some payment of profits under the bond, although I did not yield the

171 original agreement or waive any right in it whatsoever; he however made no payment as agreed. About May, 1872, I left for Washington—at that time he was having a trouble with one Grant, an Englishman, in regard to investments which Grant had made in this same contract. I met Ordway at the Metropolitan Hotel, Washington,

& had several hours' interview with him in regard to his case. With him I went to see B. F. Butler, & he laid before him the whole contract, with Grant reading to him the contract of Shedd & then of Grant. In this conversation he assured Mr. Butler & myself that there was no adverse interest to either Shedd or Grant's contract, & that as Shedd's contract covered only three-eighths he was afraid that Grant's
172 contract would have to be settled.

He never mentioned at that interview the names of any parties who had any interest whatever in the government contract excepting Shedd & Grant, & over & over again distinctly stated that there was none, & that what there had been had been closed up with the James River stock. He put me off at that time from any payment on the ground that what money he had received from the government, which I think was some $15,000, he was obliged to pay to Grant as a part payment towards his final settlement, but promised to pay Mr. Shedd from the 15 per cent. of the government as soon as that was cleared up, which he said would be soon, as he should try to shove on
173 to Grant some property which he called bogus property. The settlement with Grant I had nothing to do with any further than to be present at their several consultations & always in the interest of Mr. Shedd.

A series of correspondence was kept up then until January, 1873, when, being unable to get a settlement, Mr. Shedd & I visited Richmond to see Ordway; this was specially on account of some promised interest, as will appear by his letter of June 13, 1872, in which he partially narrates our matters under controversy while I was at Washington; said letter bears date June 13, 1872, & is hereto annexed, marked Exhibit H, W. C. G., with also the letter of J. A. Ordway, his brother, of date July 12, 1872, marked Exhibit I, W. C. G.; also his own letter of date August 26, 1872, marked Exhibit K, W. C. G.

Adjourned to June 24.

174 June 24, parties reappeared & deposition proceeded as follows:

Int. 1. In your conversation with Ordway at Richmond in April, 1872, what did he say, if anything, as to the nature of his agreement with Shedd in the summer of 1871, when the latter agreed to advance the money?

Ans. He said that the money was advanced through Mr. G. F. Ordway, his partner & attorney, with the understanding & agreement that the money should be used to develope a government contract then obtained or to be obtained on a James River granite quarry; that from the receipts of the government contract Shedd was to be reimbursed as received; that he was to receive a rate of interest for such invest-
175 ment twelve per cent., payable semi-annually; that Shedd received the notes which I then showed to him as a security. I think there were five or six notes & these notes were to be extinguished from time to time. Subsequently, in speaking of the contract, he spoke of this fifteen per cent., & said Shedd was to be paid from that fifteen per cent. from time to time the money put in, & I attempted in accordance with that understanding to so embody it in the bond. It was my understanding & Ordway's too at the time the bond was made that it was simply embodying in writing what he had through his cousin, G. F. Ordway, previously agreed.

He distinctly stated over & over again that the money was obtained

by him through G. F. Ordway from Shedd for the sole purpose of developing this government contract.

176 Int. 2. State whether Ordway voluntarily gave this bond.

Ans. There was no voluntary act of Ordway in anything regarding the bond, it was absolutely forced from him, and after I had told him that I had come to Richmond to fight him, but would smoke the pipe of peace if he was willing, he seemed to shun an investigation and desired me not to consult with any other citizens of Richmond and he would comply with my requests. I told him that I had a letter of introduction to and should leave my matter with one Cannon, a lawyer of Richmond. On the contrary he reluctantly signed even the agreement which I drew up and left for him to copy.

177 Int. 3. In April, 1872, was granite being taken from the Westham quarry or from the James River quarry?

Ans. I can't tell. I can only say this, that while at the James River quarry I saw several large stones encased in wood and iron which were marked for Washington, and on the canal-boat or scow there were other and similar stones, and in the workhouse men were engaged in facing similar stones, and the quarry was being worked. Ordway didn't tell me from whence those stones came. I formed my own conclusion.

Int. 4. When Samuel S. Green was present during one of your conversations with Ordway, in April, 1872, what, if anything, did he say or do indicating previous knowledge or ignorance of Mr. Shedd's

178 loan to Ordway?

Ans. No one about the premises, bookkeepers, brother, Green, or any one else that had access to the building, but seemed familiar with Shedd's investment. Shedd's name seemed to be a household word there. I formed the opinion that it was the only source from which they received any money; and there seemed to be a general rejoicing that Green had arrived from Baltimore with funds, which were to be added to Mr. Shedd's. Green heard Ordway and myself in conversation about Shedd's loan. He joined in the conversation; was not surprised in any way regarding it.

Int. 5. State what is the legal rate of interest in the State of Massachusetts.

179 Ans. Any interest that you may contract for in writing may be enforced. A verbal contract for more than six per cent. is good, but no more than six per cent. can be recovered by law.

Int. 6. When at Richmond in April, 1872, did you exhibit to Albert Ordway the power of attorney to his cousin, George F. Ordway, which is in evidence in this case marked Exhibit A, R. G. S.? (Exhibit shown witness.)

Ans. I did, and he begged me hard to let him have it; said it was his. I had a conversation with him about it. He said that George F. Ordway had not only his full power of attorney to bind him as to all matters, but up to the time of my visit was also his partner.

180 Int. 7. By the bond in suit Ordway agrees "to procure the consent of said copartners to so much of said contract as affects their interest, in writing." Was such consent procured; and, if not, why?

Ans. Their consent was not obtained, although requested of Ordway. He was to send it to me, and gave as a reason subsequently why he did not, that by the terms of the government contract, and their articles of copartnership, they, Andrews and Green, received nothing from the government themselves except as it came through Albert Ordway; that the government certificate would be all the voucher I should require for

Shedd's three-eighths of the receipts from the government. I asked
him what we should do regarding that clause in the bond
181 which referred to the individual profits of Ordway as a member
of the firm, that he had agreed to furnish me, but, like many of his promises, only made to be broken.

He gave me the articles of copartnership, and I saw from them that Andrews and Green had no interest in the fifteen per cent. payment by the government. At least, in my judgment, their consent was not necessary, so I did not press for it as to the fifteen per cent., but I did press as to the direct partnership profits, aside from the government contract.

Ordway told me that they were doing a great deal outside of the government contract in monumental works, curbing and paving stones, and that they were making money on it.

(Signed) W. C. GREENE.

182 EXHIBIT A.—W. C. G.

[Office of the Westham Granite Quarry, contractor on new State Department, Washington. Monumental, paving, and rubble stone supplied to the trade. Address: Albert Ordway, P. O. Box 177.]

RICHMOND, VA., *May* 29, 1872.

W. C. GREEN, Esq.,
33 *School st.*, *Boston.*

DEAR SIR: Your letter of 16th reached here the same day that I left for Washington, where I have since been absent, which will account for apparent long delay.

I hasten to send the papers, which I have executed as you direct. You can return me one with the other papers, as I previously advised.

I find but one error in the instrument, and that is at the end
183 of the first paragraph, in which you speak of firm of "Andrews,
Ordway & Green" as "joint contractors." They are not joint contractors with me—not being known or recognized by the gov't. The contract is to end with me individually, and I simply enter into copartnership with them for the purpose of executing it. It might be well, therefore, to erase the words "and joint contractors."

Tell Mr. Shedd that all is going well, and that I shall do my best.

Truly yours,

ALBERT ORDWAY.

Exhibit A., W. C. G.

184 EXHIBIT B.—W. C. G.

[J. F. Cake, Metropolitan Hotel.]

WASHINGTON, D. C., *June* 7, 1872.

Received of W. C. Greene, bond entered into between myself and Robert G. Shedd, under date January 1, 1872, and five hundred shares James River granite stock, transferred to me by him as attorney for Robert G. Shedd.

ALBERT ORDWAY.

Exhibit B, W. C. G.

EXHIBIT C.—W. C. G.

[Office of the Westham Granite Quarry, contractor on new State Department, Washington. Monumental, paving, and rubble stone supplied to the trade. Address: Albert Ordway, P. O. Box 177.]

RICHMOND, VA., *May* 13, 1872.

W. C. GREEN, Esq.,
Boston, Mass.:

MY DEAR SIR: I have been expecting every day to hear from
185 you, and somewhat disappointed at not. I got a letter from Mr. Shedd, which has gratified me very much from the confidence he places in me, and can only say that I not only shall adhere faithfully to my proposition, but shall pay it up faster if I find the money made, and am able to withdraw it from the contract safely. Without assuming any special honesty in the matter, policy and necessity would dictate my seeing Shedd square through this thing, and I am bound to do it. I have sent him a new note, dated properly, in place of the one I gave you to carry home.

Shedd has a certificate of 500 shares of James River granite stock. Please endorse transfer on the back of 365 shares to Geo. H. Williams and 135 shares to W. H. Farrar, and send to me at once so that I can close with them and transfer the interest in contract to Shedd. There are also 333 shares here in Frank's name on which he had endorsed transferred to Robert G. Shedd. For those send me a power of attorney
authorizing me to transfer 10 shares to Geo. H. Williams, 173
186 shares to C. M. Lockwood, 150 shares to W. H. Farrar.

The parties are waiting on me to close the transaction as proposed.

Fix up the other papers and send on for my signature, but forward the stock and power of attorney as soon as you can.

Truly yours,

ALBERT ORDWAY.

Exhibit C, W. C. G.

EXHIBIT D.—W. C. G.

[Sam'l S. Green, R. Snowden Andrews, Albert Ordway. Westham Granite Quarry. Superior granite for monumental and cemetery work. Dimension, paving, and rubble stone supplied. Address Andrews, Ordway & Green, P. O. box 177.]

RICHMOND, VA., *June* 18, 1872.

FRIEND GREEN: The parties are pressing me about the transfer of that "James River" stock. Please send the power of attorney at once, for if time of delivery of stock to them expires they might upset bargain.

In haste.

ALBERT ORDWAY.

Exhibit D, W. C. G.

187 EXHIBIT E.—W. C. G.

[J. F. Cake, Metropolitan Hotel.]

WASHINGTON, D. C., *July 2d*, 1872.

MY DEAR MR. GREEN: I have been here for a week and shall probably go back to-night. I anticipate but little delay in closing out

my matters, as before I left Richmond I made bargains for all. Mr. Grant is at the White Sulphur Springs, and I am going up there to make one more effort to sell an interest to him or get money. That, however, is outside of T. T. O. notes which I have provided for beyond any contingency that I can see.

My judgement in the James River quarry was right, and I saved my bacon on that if I have had bad luck on other things. The parties to whom sold out have sunk over $5,000 on it since and are pretty
188 sore. I asked them last night how they were getting on, and they let out on me, saying it is a "d—m bad quarry, Ordway, and you knew it when you sold it out to us; you have stuck us badly." They all went down to Richmond last night to see what they shall do, and I would not be surprised if they suspended operations.

I hope you have sent to Richmond the power of attorney transferring that stock, as I fear they may try to break the bargain otherwise, the time specified in agreement for delivery of stock having elapsed. If you have not sent send at once.

Truly yours,

ALBERT ORDWAY.

Exhibit E, W. C. G.

EXHIBIT F.—W. C. G.

[J. F. Cake, Metropolitan Hotel.]

WASHINGTON, D. C., *June* 7, 1872.

189 MY DEAR MR. GREEN. Rec'd your card and enclose you receipt desired.

Please send me by next mail power of attorney from Shedd to yourself authorizing you to transfer to me the five hundred shares stock, also a power of attorney from him to me authorizing me to transfer the 333 shares (standing in Frank's name and by Frank endorsed transferred, on the back, to Shedd) in the manner and number of shares indicated in my letter, which you said you sent Shedd without reading.

Not through with Grant yet.

In haste,

ALBERT ORDWAY.

Exhibit F, W. C. G.

EXHIBIT G.—W. C. G.

SEPT. 4TH, 1872.

DEAR SIR: Your letter of the 2d is before me. If I have been
190 misinformed of course it will amount to nothing, but one thing I am sure, because I heard it, viz, that a division of profits would take place once in six months at least. I have not got a copy of your copartnership; had I have had it, I should have written only that which it contained. I am not inclined to *to* do you any mental injury, but that you will not delay the payment to Mr. Shedd as early as possible. You have had his money to use—how, I don't know, never having asked you, but you have had it individually, & he is without it. It's a large sum to have lay idle, & get no recompense from, but it's his present fortune, and you cannot wonder at his & my anxiety to recover some of it back at once, especially so when, by the recent failure of Ordway & Co., he loses so much, & on $19,000 is obliged to take 33 p'r c't—coupled

191 with it sickness of self & wife. I don't wish to make anything more than it is or excite morbid sympathy, but, I say, put yourself in his place & then who would be anxious? Do all you can for him at once as a mason, Christian, good fellow, & remember it's your duty.

Truly your friend,

W. C. GREENE.

Col. A. ORDWAY.

Exhibit G.

192 EXHIBIT H.—W. C. G.

[Sam'l S. Green, R. Snowden Andrews, Albert Ordway. Westham Granite Quarry. Superior granite for monumental and cemetery work. Dimension, paving, and rubble stone supplied. Address Andrews, Ordway & Green, P. O. box 177.]

RICHMOND, VA., *June* 13, 1872.

FRIEND GREEN: Your favors received. I have about concluded a negotiation for $3,600 for 60 days, and hope to send you check for it to-morrow.

In making up settlement with Shedd no allowance was made for the $200 I let you have on his a/c. You had better let the $181.42 interest, due July 1st, go against that.

Will put the stamps on bond.

Have made a settlement with Grant, which I think will come out all right. I can't give you the details of it on paper, but will tell you whole story when we meet.

Truly yours,

ALBERT ORDWAY.

Exhibit H, W. C. G.

193 EXHIBIT I.—W. C. G.

[Albert Ordway & Co., sole proprietors "Imperial Buckingham slate," No. 14 Governor street. Maw & Co's English floor tiles, Virginia cane-fibre paper for building purposes, ornamental iron goods, etc. Marbleized slate mantels constantly on hand, in the largest variety to be found in the South. Address, P. O. Box 177.]

RICHMOND, VA., *July* 12, 1872.

W. C. GREEN, Esq.,
Boston, Mass.:

DEAR SIR: Yours received. Col. Ordway is sick and gone to White Sulphur Springs to see Mr. Grant.

Yours truly,

J. A. ORDWAY.

Exhibit I, W. C. G.

EXHIBIT K.—W. C. G.

[Albert Ordway & Co., sole proprietors "Imperial Buckingham slate," No. 4 Governor street. Maw & Co's., English floor tiles, Virginia cane-fibre paper for building purposes, ornamenal iron goods, etc. Marbleized slate mantels constantly on hand in the largest variety to be found in the South. Address, P. O. Box 177.]

RICHMOND, VA., *Aug.* 26, 1872.

FRIEND GREEN: With a long pull and a strong pull I finally man-

aged to wipe out the $3,750, though it has cramped me badly
194 since. It will show Shedd that I mean to do what I say.

I have still got Grant on the string. I laid my plans when I submitted to the terms they forced on me in Washington, and I think he will bite. It was an iniquitous grind and I hope to get even. I will give you a history of it when I see you.

I want you to send me that power of attorney, etc., that Frank had, and which you told me you had and would send me with the other papers—you probably overlooked it. I don't like to have such power hanging in Frank's hands. He told me it was cancelled, and I so supposed until you told me to the contrary.

Truly yours,

ALBERT ORDWAY.

Exhibit K, W. C. G.

195 JUNE 24, 1875.

GEORGE F. ORDWAY, being first duly sworn, in answer to interrogatories proposed by A. S. Worthington, esq., of counsel for complainant, testified as follows, viz:

Ans. My name is George F. Ordway; age, forty; residence, Boston, Mass. I am clerk for Henry Bright, jr., & Co. I know the plaintiff, Mr. Shedd; have known him about twenty years. I know the defendant, Albert Ordway; he is my cousin; have known him all his life.

Int. 1. Where were you in the spring & summer of 1871, & in what business were you engaged?

Ans. I was in Boston, engaged in millinery & fancy dry goods. J. M. Fellows was my partner—the firm being Ordway & Co.

Int. 2. What were your relations with Mr. Shedd at that time?

Ans. We were having business transactions with one another;
196 he had investments with us.

Int. 3. When did you first obtain a loan from him to be invested at Richmond?

Ans. Some time in August, 1871. I was in Richmond, Va., from July 11 to July 21, 1871, talking with my cousin Albert about getting money from Mr. Shedd to put into the granite contract with the State Department. He gave me a power of attorney to act as his agent in order to show Mr. Shedd that I had full power to act for him. After my return from Richmond on July 25th or 26th, I saw Mr. Shedd at my house & he promised to give me from twenty-five to fifty thousand dollars. Mr. Shedd was to be secured by the profits on the contract, & also by all business outside of the contract. I told Mr. Shedd that he was perfectly secure, as government allowed fifteen per cent. on the cost of cutting the stone; that this fifteen per cent. was clear profit,
197 & that he would be paid from that as well as the other profits. All this occurred at the interview about July 25th or July 26th.

Int. 4. Did you communicate this agreement to defendant?

Ans. The substance of it I did before the first of August; I think I wrote him on July 27 the substance of my conversation with Shedd.

Int. 5. When did you next see Mr. Shedd?

Ans. About August 15, at Poulteney, Vermont. I was with Shedd there & went with him to Rutland, & thence to Keene. I fix the date from the fact that I arrived home on the 21st & my child was born on the 20th.

Int. 6. How do you fix the date of the original agreement with Mr. Shedd?

Ans. From a memorandum I made at the time, which I have here & produce (witness produces the same).

Int. 7. What is stated in that memorandum as to the date of your conversation with Mr. Shedd?

198 Ans. I was sick from July 25 to Aug. 4, & I remember it was the 1st or 2nd day of my sickness he came to my house; the date of my illness is stated in the memorandum, but not of my interview; the memorandum is in the following words, "Confined to the house from Tuesday, July 25, till August 4"; this memorandum was made about the time of my sickness; I kept a memorandum from July 8 to August 1, about. I wanted something to refer to in the future, as I regarded this as an important transaction; it was the first time I ever handled so much money as that at one time.

Int. 8. Does this memorandum show the date of your arrival at Richmond; if so, what was it?

Ans. July 11, 1871; the memorandum is as follows: "Tuesday, July 11, left Norfolk at 5½ o'clock in the morning for Richmond on
199 board steamer Sylvester." The memorandum doesn't state the time of arrival; I got there the same evening. I fix the time when I left Richmond from a memorandum made Sunday, July 23. The memorandum is as follows: "Ed. was here yesterday on my return." I left Richmond one day & got to Boston the next, July 22. From the 11th to the 21st I was at Richmond, stopping at Albert's house.

Int. 9. Before you went to Richmond what negotiation, if any, did you have with Mr. Shedd about the proposed loan?

Ans. A general understanding about investments; he had money to invest & I talked with him about investing at Richmond; to find such investment was one of my objects in going to Richmond. I received a letter from Mr. Shedd when I was in Richmond in relation to the proposed investment; I don't know where the letter is; I presume it is destroyed.

200 Int. 10. While at Richmond what did you learn from Albert Ordway or from personal observation as to the condition of the James River Granite Quarry?

Ans. I went to the quarry and had a talk with the foreman. I saw the quarry & they were working it at that time, doing a fair business, getting out stone for a church in Richmond. Albert told me that he considered it a very valuable quarry, said he knew just what the stone was costing him & just what profit he was making.

Int. 11. While at Richmond what did you learn from Albert Ordway as to the proposed contract with the government for furnishing granite for the State Department building at Washington?

Ans. He told me he was sure of the contract for the State Department; he told me he had sent a sample of stone from the James River quarry with his bid, & that he should get the contract under that
201 sample & bid. He said the sample had been approved by Supervising Architect Mullett. I saw Mullett myself at Richmond, & he said that the granite was first class & that the quarry was too valuable for any government contract.

Int. 12. While at Richmond what conversation had you with Albert Ordway in reference to Mr. Shedd's proposed investment?

Ans. He said if I got the money from Shedd he would put it into the James River Granite Quarry; would work the quarry with it for the government contract or any other business. I had arranged with Albert that I should make this proposition. He told me I could make the proposition to Mr. Shedd that he could be secured on the gov-

ernment contract, & that fifteen per cent. for the cutting of the stone was clear profit, & the profit on the stone itself was additional. It was
202 understood that Mr. Shedd was to be secured upon this 15 per cent. & other business also. The strongest inducement to Mr. Shedd was that he was sure of getting his money out of this 15 per cent. I stated to Albert that I wanted something to show Mr. Shedd that I had full power to act for him, & I drew up this power of attorney & he signed it. Paper marked Exhibit A, R. G. S., is the document I refer to. (Witness examined the paper referred to annexed to deposition of Mr. Shedd.)

Int. 13. What was the object of your visit to Poulteney in August 1871?

Ans. To complete arrangements about sending Mr. Shedd's money to Richmond, to ascertain when I could rely upon it. I had heard from Albert Ordway July 29th by telegraph; the telegram is destroyed; I have a memorandum of it; it was to the effect that the granite contract had been awarded to him. Mr. Shedd & I arranged at Poulteney to send money for the contract.

203 Int. 14. When and in what amounts did you receive the money from Mr. Shedd & forward it to Albert Ordway at Richmond?

Ans. In August I received $6,500, before I went to Poulteney; Aug. 12 I sent Albert Ordway $1,500 of Mr. Shedd's money which we had on deposit. I took care of a good deal of Mr. Shedd's money at that time. I sent that under authority of the arrangement made with Mr. Shedd July 26. On the 29th of August I sent Albert $5,000, on September 5 I sent him $20,000, & September 13 I sent him $1,690 more; this was all Mr. Shedd's money except part of the $1,690; the whole amount of his money forwarded then was $27,500; the $10,000 in addition to this Albert had at Richmond already invested some other way, but which was to be considered part of Mr. Shedd's $50,000.

Int. 15. Have you any letters rec'd from Albert Ordway in July
204 or August, 1871, relating to Mr. Shedd's investment or containing allusions to it?

Ans. I have letter date of Aug. 21, 1871, which is in his handwriting & signed by him. I produce the letter & offer it in evidence (the same is annexed, marked Exhibit A, G. F. O.). I have also a letter of date Aug. 27, 1871, in his handwriting & signed by him. I produce the letter & offer it in evidence (the same is annexed, marked Exhibit B, G. F. O.). These are all I have been able to find bearing on this subject. I have examined my letters recently & all the others were destroyed, these being preserved only by accident.

Int. 16. What was the whole amount of money obtained from Mr. Shedd & invested at Richmond under the agreement of July 26, 1871?

Ans. $38,500; the rest of the $50,000 was not sent on because I needed it in my business here, & because I was sick in January or Feb-
205 ruary & was unable to attend to business for eight months.

Adjourned to June 25.

June 25.—Parties reappeared, and deposition proceeded as follows:

Int. 17. What proportion of this sum of $38,500 was advanced by Mr. Shedd under the agreement of July 26, 1871?

Ans. The whole of it. Mr. Shedd bound himself, July 26, to advance from $25,000 to $50,000.

Int. 18. When was the James River Granite Company organized? How many shares was the stock of the company divided into, & to whom were the shares distributed?

Ans. It was organized in August or September, 1871. I don't recollect how many shares the stock was divided into. I don't remember how the shares were distributed, except that I received shares the par value of which was more than $50,000.

Int. 19. What did you do with your stock?

206 Ans. Gave it to Mr. Shedd as collateral security. I have here a letter which I wrote to Mr. Shedd, dated September 8, 1871, enclosing the stock, which I offer in evidence. (The same is annexed, marked Exhibit C, G. F. O.)

Int. 20. In what business is your former partner, Mr. Fellows?

Ans. In the lumber business in Hopkinton, N. H. I presume he is acting for his father, as he is a man of small or no capital.

Int. 21. Has your wife been released by Mr. Shedd from her obligation as signer of the notes given him for the loan of $38,500?

Ans. She has. It was done at my instance, in the spring of 1872, to try, when I was sick, to make me well. She had then very small means.

207 Int. 22. Do you know whether your brothers, Edward & Henry M., admit, or deny, their liability on the notes in question as members of the Ordway Slate Company?

Ans. I know that they deny their liability on the ground that he (Albert) had no right to sign their names. The Ordway Slate Company, in 1871, was composed of Albert Ordway, Henry M., Edward, &, I think, George F., myself. I don't recollect whether I had left the company at that time or not.

Int. 23. In what style was your cousin (Albert Ordway) living when you visited his house in July, 1871?

Ans. I should say in what I considered an extravagant style. He had a large house, was spending money freely, kept four servants,

208 kept a horse, & kept plenty of champagne & other liquors on hand. I have not been to Richmond since that time.

Int. 24. Has the defendant been in Boston recently?

Ans. I saw his name in the paper, & my brother said he saw him in the procession of Knight Templars, June 16. They left here June 21. The papers reported a speech here by him on Saturday.

Int. 25. Are you now on friendly terms with the defendant?

Ans. No, sir; our friendly relations terminated in January or February, 1872, because I thought he had swindled me out of $3,600.

Int. 26. Are your relations with Mr. Shedd friendly?

Ans. Yes, sir; they always have been for twenty years.

Int. 27. Did you keep copies of your letters to Albert Ordway in 1871?

Ans. I think not. I know I did not.

209 Int. 28. In what way & through what banking house did the defendant receive from you the several sums of money sent to him by you in August & September, 1871, belonging to Mr. Shedd?

Ans. Through J. R. Goddard & Co., of Richmond, by Albert's draft on me in their favor.

GEORGE F. ORDWAY.

EXHIBIT A.—G. F. O.

RICHMOND, VA., *Aug.* 21, 1871.

DEAR FRANK: You see I am taking these letters along in installments, as it were, and in the intervals looking after Joe and Grady, who are hard at work on the books.

210 Give you a short sketch of events, without attempting to enter into details.

You will remember I went to Washington on a Monday. Fought the whole week out with varying hopes and fears until Saturday, when we marshalled all our forces and brought about a decision. Early in week saw that they could not give contract on our quarry alone; that must have Green & Andrews' quarry or it was all up. Andrews' friends were fighting hard for their proposal, with Senator Cameron to back them; and though I was certain of beating them, began to feel pretty blue about getting hold of their quarry, and if I did not get that, knew I was gone up, even if I did get the award of contract. Mullett
211 sent for me and asked me if I had lease on the Green quarry, so that I was sure of it if he awarded contract to me, and I answered unhesitatingly, yes; though how in the devil I was to get it I didn't know. Got telegram Thursday morning from Andrews' that he had returned to Baltimore. Went over at once. Said he could not in honor make any arrangements with me, as he was bound to the other parties until award was made. Showed him situation, and that I was bound to beat. Finally arranged verbally that he would enter into some sort of an arrangement with me after award was made, basing his quarry at $60,000—the same figure as arranged with the previous parties—that his arrangement would end when award was made.

212 Got Mullett's report in to Sec'y of State on Friday and his written award on Saturday afternoon.

The contract gives me furnishing of the granite for the State Dep't, provided I will also furnish the balance of building—the Army and Navy Dep't. Also cutting the granite for the' all. Government paying 15 % on cost of cutting, and furnishing all the tools, buildings, etc., etc. Bodwell, of Maine, has the basement story and the area court yards—all there is below the surface of the ground. I have the whole building above ground. His is but small proportion. You will remember my point was that if we could only get the wing of the building, the State Dep't proper, we would have best show for balance, as they would
213 want to use the same granite. You will see that results exceeded anticipations; that we have got the whole to begin with, and all in same contract.

The contracts are not yet drawn out and signed, though I have been expecting notice every day to go on for that purpose. Bodwell's has to be drawn up first as he has to begin first, and his papers are not yet completed. Mulett has been away most of the time, and there is considerable form to be gone through. I have read the pencil draft of my contract, and it is about 16 pages foolscap. It may be two or three weeks yet before they are ready for me to sign, so I cannot send you copy until made. Bodwell's contract has been sent him for signature and his bonds, but he has not yet returned it, as I learn by tele-
214 gram to day from Farrar. If he should slip I would get his portion also, but am not very anxious to have it, as it would push us too much before we get organized.

The next thing was to make the arrangements with Green & Andrews. The contract called for a lease on both quarries—our quarry and theirs. Could not take ours alone. Here was place for finesse and careful diplomacy. Did not want to take any out of our quarry if could arrange to get it all out of Green & A———; could not arrange to all out of our quarry and at same time get a lease on Green & A. Reasons briefly: Green's quarry has a large monumental business; if we took stone for the contract out of both quarries, would leave them

215 room enough to carry on outside business. By arranging that, whole contract is to be filled out of their quarry. I shut that quarry up for the next ten years, and all the fine business that has been coming to them will come to our quarry. Then I had to guard against letting Andrews see how much I was in his power. Well, we talked and bartered all one day in Baltimore. Went over to Washington, and talked out another day there, and Andrews and myself came to understanding. Next thing was to come to Richmond, and go over the same thing with Green, his partner, with this exception, that Green is an uneducated man, incapable of grasping magnitude of such a piece of business, though a splendid quarry-man of 30 years' experience. He
216 was bigoted and much opposed to making any arrangement, and I began to feel shaky. Finally, after two days' talking, we got him into an agreement, and two more days were spent with lawyers, drawing up all sorts of papers.

Our agreement is simply and briefly this: They deed to me in fee-simple, one-third of their quarry, tools, derricks, boats, engines, and everything connected with business, which, as a whole, is valued at $60,000 (we had trouble there getting wife to sign). We form a copartnership, into which each puts his share of the property, and I put the contract. The partnership is a regular one. On this contract I am to receive $\frac{14}{36}$ of the profits, and they each $\frac{11}{36}$; on all other business or future business the profits are divided equally. Andrews agrees to
217 raise $25,000 capital for the concern in addition to present. At first glance it might seem that I had sold out a little over one-half of the whole contract for $20,000, but you will find when I come to explain details to you that I have made an excellent bargain, and have kept our quarry intact, giving a lease on it to the government, as you suggested. All these papers and agreements I want to go over with you, but it is useless for me to send you copies of them, as they would be so much Greek without explanations. You will be pleased with the bargain when I show you its bearings. I wouldn't take $100,000 for that week's work.

Next thing, and one that I have thought a great deal about—my bonds for $100,000. I told you something about it here. It is a
218 pretty steep bond, and few men would like to give it on a contract. I was determined to be beholden to no one for it—neither relative, friend, or foe, but to be perfectly independent—to make it a clear matter of bargain and sale; so that if anything should happen, and bondsmen had to plank up $100,000, not a word could be said about ruining your friends. I believe I would rather have given up half the contract than asked my bonds from you or any one as a favor. This matter required about a week's time and two trips to Washington. I suppose you have been wondering what I have been doing all this time; you begin to see. I finally concluded with one of my Wash-
219 ington friends an arrangement to this effect: He is to pay me $10,000 for a fifth interest in the James River Granite Co.; is to plank up $100,000 bond & security, and I give him him $\frac{7}{72}$ of the net proceeds of contract. All this will have to explain to you in details. The bonds are made and I have the papers.

Next step organized the Jas. R. Granite Co., to which will devote separate letter, and what your $27,500 is to give you.

Have admitted your partner concern A. O. & Co., for which, with all its details, separate letter, with notes, documents, etc.

It seems almost useless to attempt all these things by letter. You do not want to leave home "under the circumstances," nor do I; but as

soon as Zounie is confined I have been thinking that I would go
220 to New York, to arrange some business there in connection with the agency of several things I want for our new firm, and that you and I had better meet there previous to your next trip down here. I think I can get on there by 15th of Sept., unless Mullett interferes with my movements by calling me there. However we will leave that in abeyance, as I suppose you could come over to New York at any time on receipt of a telegram from me, and it may be that plans of movements will be changed.

I shall have to break this letter off here, as one of the Welshmen has come down, and they are infernal almost. Will take up the pure business matters in continuation—next volume.

ALBERT.

221 EXHIBIT B.—G. F. O.

SUNDAY, *August* 27, 1871.

DEAR FRANK: Our correspondence has been somewhat interrupted by the "family event" of which I hastily apprised you, with its attendant trouble and time occupied. My rambling epistles touched on some general matters, but there are many more to be considered; in fact, your letters are sort of texts, supplying suggestions that I don't see how in the world all the letter-writing possible on my part can sufficiently elaborate. There is not much use trying to dip into the minute particulars of everything by letter, for I don't believe I could ever make them long or explicit enough to convey the full meaning and
222 shades of meaning of all the matters we have to work together. In this letter I will plunge at once into practical business and give you an outline of that.

First. The matters of Albert Ordway, &c.

Our arrangements were that you were to come into the concern as "special partner," contributing to the capital $20,000. That 20 you were to put in by arranging the note of $10,000 with Ed. and $10,000 with Shedd. The interest that was to give you was left in abeyance, though you refer to in one of your letters, evidently having thought more of it, as though it would be best to have that understood in the beginning; I think so too. I have been somewhat at a loss to
223 know exactly what proposition to make. You put in $\frac{2}{3}$ of the capital, I put in the business which I have gained and made, my position and influence, which will gain more business, etc, etc. There must be perfect unreserve between us, no driving of bargains or overreaching, but a mutually perfect understanding and pulling together in the same harness. I desire to make the terms apparently over liberal, but really they are not so, for I do not consider that the business of Albert Ordway & Co. will be limited by the capital of $20,000 you put in and the capital of $10,000 I put in. According to my idea that will be the mere basis. You are to raise the $20,000 on your own notes (endorsed by the firm). But you say in one of your letters that you infer that I
224 will not have use for over the $27,000 which goes into the James River granite. That we cannot tell. To go back, as I said, I expect this $30,000 to be the basis of A. O. & Co., and that all the further capital we raise and all the operations we go into shall be done by the firm, and that we may go on as a firm (after settling our individual interests in the beginning), and use all the capital that you or I can get hold of, if we find proper places to put it into, and that all the further capital shall be raised in the name of the firm, and the interest on it

paid by the firm, and the profits of it to go to the firm. It is for that reason that I think our preliminary arrangement should be a liberal
225 one on my part, because I look forward to your influence in bringing to the firm all the money we may want to raise for any operation we see it well to go into.

I have settled all of A. O. & Co. matters with Ed. to August 15th (date of settlement), interest and all, except as to $10,000, which A. O. & Co. in theory pay him and you borrow. I enclose a note endorsed by A. O. & Co. for you to give Ed. I think it is best that the notes to Ed. and Shedd should be signed and drawn by yourself, as it is the straightest business way.

I thought it the best way to enter the $20,000 you put in as cash and then enter as having paid note to Ed. and Shedd in cash. I will give you these entries a little further on so that you may see the whole
226 transactions in a bookkeeping light. The entering as "cash" gives you the privileges as a special partner. For the same reason I advertised the special partnership, and also for another reason, bunkum and credit (though the law requires advertisement to make a special partner entitled to privileges of one). I enclose copy of advertisement. It has had a fine effect in Richmond, worked as I thought it would.

Now on the date August 15th I close the books of A. O. & Co., making up inventories, balance-sheet, etc., carrying out profits and losses, and bringing down balances to the new firm. (This work is now going on, with Joe and Grady pretty well occupied.) You see I am going through all the drudgery now of getting the ship in order
227 for the voyage and everything started out anew, and it is no small job. Well, on the date 16th, I open the books for new concern with following entries:

Aug. 16. Cash, Dr.		20,000
	To Geo. F. Ordway	20,000

"We have this day admitted George F. Ordway as a special partner in the now existing firm, he contributing as special capital the sum of twenty thousand dollars. The capital represented by the general partners, Albert Ordway and Joseph M. Ordway, is what may now stand on the books, say ten thousand dollars. The terms of the new partnership are as follows: George F. Ordway, as special partner, shall be entitled to participate in one-half of the gains and losses of the concern,
228 with the further guarantee to him that, if he so demand it, and his share of the profits do not amount to that much, he shall be entitled to draw from the profits sufficient to make up twelve per cent. on his special capital; and if the whole profits do not amount to that much, then to draw upon the capital of the general partners for so much as may be requisite for that purpose. The other half of the profits, or such as may remain after satisfying the share as provided on the special capital, shall go to Albert Ordway and Joseph M. Ordway, the general partners, jointly; its division between them being a matter of individual arrangement and not a part of this partnership. The books
229 have been brought up as nearly as possible to this date, profits and losses divided to the old concern, and balances brought forward to the new; but it is understood that any losses that may accrue to the firm from balances now standing shall be charged to the a/c of the partners in the previous firm, and not to the profit and loss a/c of the new concern. Some acs., such as store, R. C. Nicholas' estate, Ordway Slate Co., etc., it has not been possible to bring down the profits

and losses accurately to date, and the new concern will therefore receive the benefit of these accrued profits; but it is supposed that those items will be equally balanced by some charges outstanding on interest,
230 storage & labor, charges & drayage a/c, etc. But it is understood if, on making up the first balance-sheet of the new concern, the differences between what is for and against benefit of new concern are sufficient to be apparent, they shall either be charged against or credited to the a/c of the partners in the old concern."

This will make a rather long entry, but you know I believe in details. This entry explains to you as much as I could write in a dozen letters. I think its provisions liberal towards you, but you have been liberal to me, and we are going to have no questions about benefits conferred
231 or received on either side; it must be a sort of Siamese twin business to work satisfactorily, though I believe that these preliminaries should be thoughtfully and prudently considered and made, that we may have a foundation wisely enough built, strong enough and wide enough to build any edifice we may be able to erect. Study this over carefully now, give your ideas frankly, make any corrections or changes that may seem to you proper, and when it is all satisfactory I will transfer to journal.

The next entry is (and I give these so that you may fully understand my theory and mode of procedure):

Aug. 16th. Bills payable, Dr..... 10,000
To cash..... 10,000

232 Took up our note for that amount of March 1st, at five months (note to Shedd).

You see I make the transactions cash; which they are in theory, though no money actually changes hands in greenbacks. I enclose note endorsed for you to sign and turn over and take up old one.

Aug. 15th. Sundries, Dr., to cash.
Bills payable.
Edward Ordway.

Made full settlement with Edw. Ordway of amount due him on a/c and of our note of date due him.

I have not got the figures and precise terms of this entry, as I am writing at home Sunday, and omitted to bring up copy of them from office as I did of the other two.

233 Aug. 16th. J. M. Ordway, Dr.,
To general stock.

Transfer to a/c of general stock, which represents the joint interest of all general partners, the above amount this day standing to the credit of J. M. Ordway.

I think these are all right, and with explanations of first part of letter will give you a tolerably clear idea of our A. O. & Co. But two heads are better than one, and I want you to go over them and see if all is as you would have it.

Now there are a 1,000 more things, when and where we shall meet, ideas I have got in my head; how we shall start our new busi-
234 ness: what we propose to take up; stone I have got; what progress has been made in all the matters now in process of birth; answers to various points and questions in your letters. But must take these up little by little. The most important matter first.

The next most important matter is the James River granite. All of

the details of that arranged, and everything arranged. Have gotten the new set of books, stock certificates, record of organization, etc., but it is not yet in the same complete state as A. O. & Co. matters, which I have thought best to fix first. Everything is done in the other, made up into memo., and arranged in my own mind; it is only a
235 matter of writing to complete the detailed entries. You and I will control the whole thing in our own hands. Your interest will be $\frac{1}{3}$ of the whole, and may possibly be as high as $\frac{2}{3}$; there are a few minor points to be settled before I can determine which. I shall send you on Wednesday $83,300 of stock; would send it to-morrow, but have to wait for the company seal to be made.

I have made Lockwood, of Washington, the president for the first year, and you a director, for this reason. Lockwood has gone to Oregon, and will probably remain there, and by giving him the nominal name of president (though we control the concern), I satisfied the
236 Washington interest, and pleased them. After the year is out I propose that you shall be the permanent president of the company, as by that time you will be well in harness, and learned the business, and take that position, not in name merely, but in fact. My idea is that you shall then take the management and control of that concern entirely in your own hands (and sooner, if practicable), and I will run other matters.

From what you write, I suppose you have the $27,000 ready. I have not drawn as you gave permission, because I wanted to have everything in shape; and you see it takes time to make up all these matters
237 and papers, and at the same time keep the regular machine running. I shall send the stock Wednesday, and then I shall want to draw and deposit to the credit of the company here. Please telegraph me on receipt of this whether I shall "draw at sight," or "without grace." You see it makes a material difference in exchange; the three days' grace makes them charge $\frac{1}{4}\%$ exchange, which on $20,000 would amount to $50, a matter to be considered. I will see what exchange they charge on "without grace," and see what it would cost to send the greenbacks by express, and advise you accordingly.

I wish I had you by me all the time instead of th's confounded writing of letters, which you are not satisfied with when you get through
238 with them that they will convey your meaning, and know that they do not convey half of what you would say, and could say in half the time. I found out lately in making these important moves how necessary it is to have some one to advise with, no matter how independ*a*nt you may be, how set in own opinions, and indisposed to take advice. I have realized that it is a great thing to talk matters over with another on whom you can rely. The mind gets into one channel, sees things through the same eyes all the time, while another and fresh mind brought to bear on them will discover and suggest many
239 new points and ideas of great value.

Well I will pull up now and resume next interval I have, and not stop to read all this over either, I can tell you.

ALBERT.

GEO. F. ORDWAY,
337 *Washington St., Boston.*

EXHIBIT C.—G. F. O.

BOSTON, *Sept.* 8, 1871.

DEAR ROB: I send you fifty shares of James River Granite stock,

and will send you enough more to make up the full fifty thousand dollars just as soon as we can get at the right method of arranging it.

240 I write on the back of the certificate what I think should be there. If it suits you I will fix them all the same way and have it transferred on the books of the co. The numbers of the N. H. bonds which I use are 974, 975, 824; Maine bonds are, 394, 183, 395. Of the $\frac{5}{20}$, 13 bonds are numbered, 116163 to 116175;

2 " " " 116326, 116327. I have raised twenty thousand dollars on these bonds; five thousand dollars at 4 mo's from Sept. 4th, and fifteen thousand at 6 mo's from Sept. 4.

Now what kind of a receipt can I give you for them, and how shall we fix it? I send a rough receipt which you can look over at your leisure and make up your mind what you want.

241 I would run up to Groton to see you to-morrow, but Marcus Fellows is away and will not return till next week, Thursday.

I am negotiating to sell my interest in Ordway & Co., at 337 Washington st., either next January or in one year from now. A man stands ready to put in fifteen thousand dollars with Marcus; but I am not going to hurry myself; caution is engraved in my very nature, from my past experience. I want first to know that I am right, that my basis, my foundation, is solid, and then I think I can execute my deliberately planned thought about as well as most people. I believe in making no move of any importance without a great deal of fore thought, but

242 I do believe, when a man has once made up his mind, in no hesitating policy. I forget whether you ask me any other questions or not. I don't know of a girl who will go to Groton. All of them talk as if a gold plate, spoon and fork should be furnished them, and they all want to sit in the parlor and entertain the company while my wife does the washing.

Can't stop for more. Please write me just how you want this fixed.

In hast'—

FRANK. (Over.)

I never before realized how hard it is to compress the business work of one day into four hours. I make an average now of about five hours, but shall bring it down to four.

243 Love to your wife and all. When you finish those papers I will send you another batch.

FRANK.

Please acknowledge receipt at once. I suppose I ought to send by express, and I guess I will, so as to be safe.

UNITED STATES OF AMERICA,
District of Massachusetts:

I, Winslow Warren, a commissioner in and for the district of Massachusetts, appointed by the circuit court of the United States for the first circuit, under the act of Congress authorizing the appointment of commissioners "for the more convenient taking of affidavits and bail,

244 to be used in civil causes depending in the courts of the United States," and the acts additional thereto, & special examiner in this case, appointed under 63rd rule of supreme court of District of Columbia, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, that the said John T. Goddard, Robert G. Shedd, W. C. Greene, & George F. Ordway are material and necessary

witnesses in the cause in the caption of the said deposition named, and lives at or near Boston, in the district of Massachusetts, a greater distance than one hundred miles, and the place of taking the depositions is more than one hundred miles from the place of trial of the cause for and
245 in which said depositions were taken. Said depositions were taken under the order, a certified copy of which is annexed, appointing the undersigned a special examiner, & after reasonable notice by me to defendant's counsel, as appears from the order & affidavits of service of notice hereto appended.

I further certify that on the 23rd day of June, in the year eighteen hundred and seventy-five, I was attended at my office, 42 Court street, in Boston, in said district of Massachusetts, by John T. Goddard & Robert G. Shedd & William C. Greene, on the 24th day of June by William C. Greene & George F. Ordway, & on the 25th day of June by George F. Ordway, & on each day by A. S. Worthington, esq., of
246 counsel for complainant, the said defendant not appearing at the taking of either of said depositions in person or by counsel; and the said witnesses were of sound mind and lawful age, and the said witnesses having been by me first carefully examined and cautioned and sworn to testify the whole truth in the cause aforesaid, did answer to the interrogatories put to them, and the testimony given by them was by me or by my clerk in my presence reduced to writing in the presence of the witnesses, and that they subscribed the same as and for their depositions in my presence, and that I have retained the said depositions in my possession for the purpose of forwarding them
247 under my own hand to the court for which they were taken, with this certificate of the reason of their being taken.

I further certify that I am not nor my clerk of counsel or attorney to either of the parties in the cause in and for which the said depositions were taken, nor in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand and seal this 25th day of June, in the year of our Lord eighteen hundred and seventy-five.

[U. S. COMMISSIONER'S SEAL.] WINSLOW WARREN,
Commissioner of the Circuit Court of the United States for the District of Massachusetts & Special Examiner as aforesaid.

248 *Motion to extend time to take testimoney 60 days.—Filed July 20, 1875.*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs. } No. 4092. Eq. doc. 14.
ALBERT ORDWAY.

Please take notice that on Monday, the 19th instant, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, I will move the court to extend the time for taking testimony in this cause sixty days. The motion will be based upon the annexed affidavit.

EDWIN L. STANTON,
Sol. for Compl't.

To Messrs. MERRICK & MORRIS,
Counsel for Def't.

Service ac'knowledged this 17th day of July, A. D. 1875.
MERRICK & MORRIS,
For Defendant.

Affidavit in support of above motion.—Filed July 20, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD }
vs.
ALBERT ORDWAY. }

I, Edwin L. Stanton, on oath, make the following statement: I am of counsel for complainant in this suit. Immediately after issue was joined in the case the complainant's counsel began the work of investigating the defendant's operations and accounts under his contract with the government and the other contracts in the office. This had to be done mainly by the examination of the defendant himself in connec-
249 tion with the books and papers of the firm of Andrews, Ordway & Green and of the Westham Granite Company. Delay was caused by the failure of the defendant to appear at different times when he had been notified to appear and had agreed to do so. In consequence of these delays, and for no other reason, the examination of the defendant was protracted until the 6th day of July, 1875.

The defendant, in his examination, stated that $94,000 had been paid to one Andrew Washburn and his assignee from the profits of the government contract. But though earnestly pressed to explain the consideration of this payment, he refused to give any explanation until on the last day of his examination, July 6th, when, in response to questions put by his own counsel, he stated that when endeavoring to obtain the government contract he found that there was strong opposition to his getting the contract because he was a conservative, and that he employed Washburn to counteract this political opposition, and for that service paid him and his assign said sum of $94,000.

It further appears in the testimony in this case that A. B. Mullett, esq., then Supervising Architect of the Treasury Department, was the officer of the government through whom the negotiations were carried on that resulted in the defendant obtaining the contract in question. Either on the first or second day after the defendant had for the first time made the statements above recited relating to political influence, the complainant's counsel sent a messenger to the office of said Mullett in this city to request him to name an hour the next day on which they could see him, and they then learned that said Mullett but a day or two before had started to Europe.

In his testimony the defendant, Ordway, affects to forget what
250 was done by him with a large proportion of the money belonging to the plaintiff and received by the defendant in August and September, 1871; and he has stated that the James River quarry was pronounced a failure by said Mullett in the summer of 1871.

The plaintiff believes that he can prove by said Mullett, and by other persons now residing at Richmond, Va., that nearly all of said money was used by the defendant in developing the James River quarry; that a sample of the stone from that quarry was the sample furnished by the defendant to said Mullett, accompanying his bid, and that the possession and control of said quarry by the defendant in the summer of 1871 contributed largely to his obtaining said contract.

EDWIN L. STANTON.

Sworn to and subscribed before me this 17th day of July, 1875.

[SEAL.] J. CRES. HEALD,
Notary Public

Order extending time for taking testimony 60 days.—Filed July 20, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs. } In eq. No. 4092.
ALBERT ORDWAY.

On motion and affidavit filed by solicitor for complainant it is, this 20th day of July, 1875, ordered that the time for taking testimony in the above-entitled cause be, and is hereby, extended for 60 days.

By the court.

A. W.

251 *Subpœna to A. B. Mullett.—Served Oct. 29, 1875.*

Supreme court of the District of Columbia.

ROBERT G. SHEDD
vs. } No. 4092. Eq. docket.
ALBERT ORDWAY.

The President of the United States to A. B. Mullett:

You are hereby commanded to appear as witness for the complainant before James O. Clephane, examiner in chancery, at the office of Stanton & Worthington, 637 F st., on the 30th day of October, 1875, at 3 o'clock p. m.

Witness, D. K. Cartter, chief justice, &c.

R. J. MEIGS, *Clerk*, &c.,
By R. J. MEIGS, JR.,
Ass't Clerk, &c.

Order for leave to take deposition of A. B. Mullett.—Filed Nov. 8, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs. } No. 4092. Eq. doc., 14.
ALBERT ORDWAY.

Upon motion of solicitors for the complainant it is, this 8th day of November, 1875, ordered that the complainant have leave to take the deposition of A. B. Mullett on or before the 10th day of November, 1875.

By the court.

A. W.

252 *2d subpœna to A. B. Mullett.—Served Nov. 8, 1875.*

Supreme court of the District of Columbia.

ROBERT G. SHEDD
vs. } No. 4092. Docket 14.
ALBERT ORDWAY.

The President of the United States to A. B. Mullett:

You are hereby commanded to appear as witness for the complainant

before James O. Clephane, examiner in chancery, at 637 F st., office of Stanton & Worthington, on the 9th day of November, 1875, at 3 o'clock p. m.

Witness, D. K. Cartter, chief justice, &c.

R. J. MEIGS, *Clerk*, &c.,
By L. P. WILLIAMS,
Asst. Clerk, &c.

253 *Deposition in behalf complainants.—Filed Nov.* 11, 1875.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

It is agreed that the depositions for complainant in this case may be taken by James O. Clephane, examiner in chancery, in shorthand, and afterwards transcribed; the depositions of each witness to be read over to him by the examiner after being so transcribed, whenever practicable, and alterations suggested by the witness to be made at the foot of the deposition before the witness signs it, unless made by consent of counsel in the body of the deposition.

STANTON AND WORTHINGTON,
Solicitor for Complainant.
R. T. MERRICK,
M. F. MORRIS,
Sol. for Defendant.

254 I certify that the foregoing is a true copy of the stipulations signed by the solicitors of record for the respective parties to the suit filed on the 20th day of May, 1875.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

255 ROBERT G. SHEDD
v.
ALBERT ORDWAY. } No. Eq. Doc. 14.

Please take notice that we shall take depositions in this case on behalf of the complainant at Richmond, Virginia, at the office of Joseph Bryan, esq., No. 1002 Main street, before James O. Clephane, examiner in chancery, beginning at ten a. m. on Wednesday the 26th day of May, 1875, and continuing from day to day so long as may be necessary.

STANTON & WORTHINGTON,
Solicitors for Compl't.

To Messrs. R. T. MERRICK, M. F. MORRIS,
Solicitors for Def't.

256 I handed a copy of the above notice to Messrs. Merrick & Morris at their office No. F street northwest, Washington, D. C., on the 21st day of May, 1875.

CHARLES F. WHITTLESEY.

Sworn & subscribed to before me this 25th day of May, 1875.

J. C. HEALD,
Notary Public.

257 ROBERT G. SHEDD
v.
ALBERT ORDWAY. } In equity. No. 4092.

WASHINGTON, D. C., *May* 24, 1875.

MESSRS. MERRICK & MORRIS,
Solicitors for Defendant:

GENTLEMEN: Referring to your oral inquiry this morning as to whether we claim the right, under the stipulation recently filed in this case, to examine witnesses in Richmond, and referring to Mr. Worthington's answer to the effect that he supposed the right was claimed under the act of Congress rather than under the stipulation, we desire to say that on reflection we hold that the stipulation referred to gives us the right to take the depositions of which you were recently notified,
258 before Mr. Clephane. We understand this stipulation to have the same effect as though Mr. Clephane had been specially appointed by the court to take the evidence in this case.

Under the 63d equity rule of the supreme court of the District it is our right to have the evidence in this cause taken orally, provided that we give you notice thereof. Our recent notification to you of the taking of depositions in Richmond serves the purpose of a notice that we desire the evidence in the cause to be taken orally.

Therefore we claim that "all the witnesses in the case" may be orally examined before Mr. Clephane with the same effect as though he had been specially appointed by the court for such purpose. And you have failed to indicate to us any objection as to the reasonableness of the time specified in our recent notice. If, however, the stipulation
259 was entered into by you on the supposition that it applied only to the examination of witnesses in this jurisdiction, and if you would prefer that the witnesses at Richmond should be only examined before any other commissioner, we are willing to have a different examiner substituted. Insisting upon our right to examine witnesses orally outside of the District as well as in it, we are willing, and indeed would prefer, to make any change in the arrangement in respect to the time or other matters that would meet your convenience. Meanwhile please consider the notice heretofore given you as operative, and if you desire any change please advise us to-morrow.

Yours, truly,

STANTON & WORTHINGTON.

I served the original letter, of which the above is a copy, on Messrs. Merrick & Morris, at their office No. F st., N. W., on Monday, the 24th day of May, 1875.

ALBERT HARPER.

Sworn to & subscribed before me this 20th day May, 1875.

J. C. HEALD, *J. P.*

260 WASHINGTON, D. C., *May 24th*, 1875.

MESSRS. STANTON & WORTHINGTON:

GENTLEMEN: We are in receipt of your communication of this date in reference to the taking of testimony in the case of Shedd vs. Ordway, No. 4092, equity.

Notice to take testimony orally before a commissioner at a place remote from the District of Columbia, and beyond its jurisdiction, seeming to us an irregular mode of proceeding, we asked Mr. Worthington

this morning if he claimed the right so to proceed under the stipulation referred to. We replied that he did not, but that he understood the right existed under the act of Congress of 1872.

When we signed the stipulation to take the testimony before Mr. Clephane, a short-hand reporter and examiner, we intended and understood the agreement to relate to testimony to be taken within the Dis-
261 trict alone, and presumed such was also your understanding, as clearly indicated by Mr. Worthington this morning. We are therefore somewhat surprised at the note just received from you. Our objection is not to Mr. Clephane, but, as Mr. Worthington was informed, is in the provision that, in equity cases, witnesses beyond the jurisdiction should be examined on interrogatories filed and sent out with a commission, except in particular cases, on the special order of the court. We, therefore, declined to recognize the notice.

Yours, respectfully,

MERRICK & MORRIS.

262 RICHMOND, VA., *May 26th*, 1875.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } No. 4092. Equity.

Commission met pursuant to the foregoing notice at the office of Joseph Bryan, esq., No. 1002 Main street, Richmond, Va., at 10 a. m. Present, A. S. Worthington, esq., counsel for complainant.

After waiting till 11½ o'clock, and neither parties or witnesses appearing, adjourned to meet on Thursday, May 27th, at the same place, at 10 a. m.

JAS. O. CLEPHANE,
Examiner.

RICHMOND, VA., *May 27th*, 1875.

Commission met pursuant to adjournment. Present, A. S.
263 Worthington, esq., counsel for complainant. After waiting an hour for the appearance of the defendant or his counsel, proceeded with the examination of the witness in attendance.

Deposition of Geo. W. Randall for complainant.

GEO. W. RANDALL, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

Examined by Mr. WORTHINGTON:

I reside in Henrico Co., Va. I am 47 years of age; and am an architect by occupation.

Q. What is your present business in relation to the Westham Granite Company, or its quarries?

264 A. Government superintendent of the granite cutting of the State, War, and Navy Department buildings at Washington.

Q. How long have you been superintendent?

A. Three years the 8th day of last April.

Q. Where is the quarry located?

A. About six miles above the city of Richmond, on the opposite side of the James River, in Chesterfield County.

Q. How far from the river?

A. On the banks of the river.

Q. How far do the stone have to be moved to get them to the water?

A. About six miles to the shipping part.

Q. In what way is the stone moved; by railroad?

A. By railroad which runs into the quarry; a branch of the Danville road.

Q. What are your duties in connection with the State Department contract?

A. Somewhat multitudinous.

Q. State them generally.

265 A. I am here to protect the government interests entirely; to see that the men do proper day's work; that the materials furnished are of the proper kind, and that the prices charged are not excessive; that the property is preserved and taken care of, and used to the best advantage; keep account of the men's time; certify to the pay-rolls, and approve the vouchers of the contractor.

Q. What had Ordway to do about furnishing this stone for the State Department contract?

A. He is the contractor with the government.

Q. What duties does he perform in connection with it?

A. His duties are general. He draws the money when he has my certificate that the vouchers are correct, and pays the men; furnished the stone, and delivers them at Washington.

Q. During the time you have been there, has stone been taken from that quarry for other work than that of the State Department contract?

266 A. Yes, sir.

Q. What proportion does the amount of stone taken for the State Department contract bear to the whole amount taken?

A. Well, I could hardly say.

Q. One-half of it.

A. Yes, sir; ¾, probably.

Q. Do you mean ¾ for the State Department?

A. Yes, sir; about that.

Q. What other contracts have been filled from that quarry since you have been there, to your knowledge?

A. The Western Union Building, New York, and a portion of the Centennial Building, in Philadelphia.

Q. Do you know what price was paid for the stone that went to these two buildings?

A. No, sir; it was by contract, cut and delivered—the gross amount.

Q. Do you know from your own knowledge or from anything Mr. Ordway has said what were the approximate profits on those two contracts, or on either of them?

267 A. No, sir; I do not.

Q. What is done with the smaller stone, not suitable for the State Department contract?

A. Generally sold for paving stone; sometimes cut up by the contractors for paving, and sometimes sold to other parties to be cut up.

Q. That has been going on all the time you have been there?

A. Yes, sir; pretty much, I should think. Allow me to say that it may assist you in your questions to state to you that I am not located at the quarry; that the yards are at tide-water, while the quarry is six miles up the river. I am not much at the quarry. I occasionally visit it, having general charge over it, to see that the stone is perfectly quar-

ried and that proper quality of stone is sent, but I am not at the quarry a great deal, and do not know so much about what is going on in regard to their private business there.

268 Q. What is done with the smaller material not fit for paving-blocks?

A. It is taken off and dumped into the river bank or into the railroad fill. No use is made of it that brings them any income.

Q. Do you know what is the value of those paving-blocks per ton or thousand?

A. It depends upon the size—from $60 to $120 a thousand.

Q. A thousand blocks?

A. Yes, sir.

Q. Ordinarily, how many paving blocks can be made from the waste material of a ton of granite, furnished under the State Department contract?

A. Indeed, I could not tell, so as to be accurate; less than half, I should think.

Q. You mean less than half as many cubic feet of paving material as there are cubic feet of stone for the department building?

269 A. Less than half as many tons, I should think; not far from one-half.

Q. How many paving blocks do you reckon to the ton?

A. It depends on the size of them. There are several sizes. In some cities they do not have a uniform size. They make them from 7 inches deep to 8 inches long and 4 inches thick to double that dimension.

Q. Take an averaged sized block, and how many of them are there to the ton?

A. About 8 blocks to a cubic foot, and 14 cubic feet to the ton.

Q. What is the cost of preparing these paving blocks for the market, aside from the labor expended upon them by the government in getting out the stone for the State Department?

A. I think from 2 to 2½ cents a piece, according to size. I think not more than that.

Q. And they sell on an average for how much apiece?

270 A. From $60 to $120 a ton delivered at the market.

Q. Since you have been the government superintendent have you kept an account of the work done under the State Department contract?

A. Yes, sir.

Q. Where are your books?

A. In Washington, in the supervising architect's office.

Q. All of them?

A. All for the south wing of the department building.

Q. And the others you have here?

A. Yes, sir. I can give you a summary of the whole thing on the other wing. I have the sheets showing the whole thing.

Q. You have not them with you?

A. No, sir. I did not know for what purpose I was called.

Q. Do you know where Ordway is to-day?

A. He is either in New York or Washington.

Q. When did he leave the city?

A. I do not know; some time since Sunday last.

271 Q. Do you know why he went away?

A. I do not.

Q. Who, for Mr. Ordway, keeps an account of his paving block material?

Q. How far from the river?

A. On the banks of the river.

Q. How far do the stone have to be moved to get them to the water?

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A. In Washington, in the supervising architect's office.

Q. All of them?

A. All for the south wing of the department building.

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A. Yes, sir. I can give you a summary of the whole thing on the other wing. I have the sheets showing the whole thing.

Q. You have not them with you?

A. No, sir. I did not know for what purpose I was called.

Q. Do you know where Ordway is to-day?

A. He is either in New York or Washington.

Q. When did he leave the city?

A. I do not know; some time since Sunday last.

271 Q. Do you know why he went away?

A. I do not.

Q. Who, for Mr. Ordway, keeps an account of his paving block material?

A. I think that account is all kept at the office over the river; that is the impression.

Q. I want to get the name of the clerk.

A. W. C. Grady.

Q. What preparation has been made at the quarry for getting out the granite in the future?

A. There has been considerable surface uncovered, and enough I think exposed to finish the present wing of the building.

Q. What is the proportion between the cost of removing the earth from the stone and the entire cost of getting out the rough stone?

A. I could not say with any degree of accuracy.

Q. What is the average depth of the earth on the stone that is to be removed?

272 A. The dirt they have removed during the past winter and fall, I should think would average twenty-five feet.

Q. At the rate at which they have been quarrying the granite how long will it take to get out the granite from which the earth has not been removed?

A. About one year.

Q. What is the cost of transporting this stone from the quarries to the State Department?

A. About $2 per ton, and 14 cubic feet in a ton.

Q. From what you have seen of Albert Ordway's manner of living in the past three years, and from your own experience, what, in your opinion, have been his expenses per annum?

A. That is a pretty hard question to answer. I do not think it exceeds $6,000.

Q. You are a married man and keep house?

A. Yes, sir.

Q. Do you know anything further touching the matter in con-

273 troversy of interest to either party?

A. No, sir.

G. W. RANDALL.

Sworn and subscribed to before me this 27th day of May, 1875.

JA'S O. CLEPHANE,
Examiner in Chancery.

Adjourned to meet in the same place at 2 o'clock of the same day, May 27th, 1875.

JA'S O. CLEPHANE,
Examiner in Chancery.

274 RICHMOND, VA., *May 27th*, 1875.

Commission met pursuant to adjournment.

Present, A. S. Worthington, esq., counsel for the plaintiff.

After waiting half an hour for the appearance of counsel and the witnesses for whom subpœnaes had been issued, the following witness was examined in regard to the service of such subpœnas.

Deposition of W. E. Nye, for plaintiff.

W. E. NYE, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by Mr. WORTHINGTON:

Q. Where do you reside?

A. In Richmond, Va.

275 Q. State your age, and occupation.

A. I am 25 years of age, and am at present general deputy U. S. marshall for this district—the eastern district of Virginia.

Q. Please state whether a subpœna for Albert Ordway, Bradley T. Johnson and Geo. W. Randall, requiring them to appear here at ten o'clock to-day, was placed in your hands yesterday.

A. Yes, sir. There was a subpœna placed in my hands for these parties.

Q. Please state what efforts you have made to find the parties named, Randall excepted. What was the result?

A. I made very earnest efforts to find Mr. Ordway and Mr. Johnson, succeeding after a while in serving subpœna on Mr. Johnson, but was unable to find Mr. Ordway, and learned that he was in New York.

Q. Please state whether a subpœna was placed in your hands to-day, requiring J. Conduit Smith, John Pickering, R. Snowden Andrews,

276 Samuel S. Green, to appear here at ½ past two to-day, and, if so, what efforts you made to find those persons, and with what success.

A. There was such a subpœna placed in my hands, and an effort was made to find the parties, but unsuccessful as to the whole of them. From the best information I could get, they were all out of the State with the exception of Mr. Pickering, who was absent from the city, said to have been at the granite quarry, several miles from this city, and would not return until between two & three o'clock to-day. Since that time, or about ½ past 2, I visited the office of the company and found the door closed, with no means of knowing whether Mr. Pickering was in the city nor not. I did not get service upon him or upon any one of the other parties.

Q. Does John Pickering reside here?

A. I am not certain whether he is a resident or not; he is stopping here now temporarily; I think he is a resident here.

Q. Is R. Snowden Aandrews a resident of Richmond?

277 A. Yes, sir.

Q. Samuel S. Green?

A. Yes, sir; resides at the quarry; has an office at Richmond.

Q. Have you frequently been at the office of the Westhan Granite Company within two years past?

A. Yes, sir.

Q. How often have you found the place closed during business hours, and all the members absent?

A. To-day is the first time I ever found the office closed entirely. I do not think I have ever been to the office before when Mr. Ordway, Mr. Green, Mr. Pickering, Mr. Andrews, some one of then. has not been there.

Q. Do you know of anything further touching the matter in controversy of interest to either party. If so, state it.

A. No, sir.

W. E. NYE.

Sworn and subscribed to before me this 27th day of May, 1875.

JAS. O. CLEPHANE,
Examiner in Chancery.

Adjourned to meet on Friday, May 28th, 1875, at 10 a. m, at same place.

JAS. O. CLEPHANE,
Examiner in Chancery.

278 RICHMOND, *May 28th*, 1875.

SHEDD
v.
ORDWAY.

Commission met pursuant to adjournment.

Present, A. S. Worthington, counsel for plaintiffs.

After waiting half an hour for the appearance of counsel for the defendant, the examination of the witness in attendance was proceeded with, as follows:

Deposition of John Pickerings for plaintiff.

JOHN PICKERING, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

Examined by Mr. WORTHINGTON, counsel for plaintiff:

Q. State your residence, age, and occupation.

A. I reside in Richmond, Va.; I am 45 years of age, and am auditor of the Westham Granite Company.

279 Q. How long have you been connected with the company?

A. I have been since the organization of the company, March, 1874.

Q. Have you any connection with the firm of Andrews, Ordway and Green?

A. No, sir.

Q. I wish you would state, in your own way, what is the relation between Albert Ordway and his contract for building the State, War and Navy Departments and the Westham Granite Company.

A. His contract was transferred or assigned by him to the Westham Granite Company at the time of its organization.

Q. Was the agreement between him and the company in writing?

A. Yes, sir.

Q. In one single instrument?

A. Yes, sir. It is a matter of record on our books here.

Q. You have the books here containing it?

A. Yes, sir.

280 Q. Will you let me see that agreement, if you please?

(Witness produces the same and hands it to counsel.)

Q. Where is the original of which this is a copy?

A. I think it is in the safe.

Q. Would you have any objection to producing that some time to-day, and allowing the examiner to make a copy of it?

A. None at all. This contract was in the hands of Andrews, Ordway and Green at the time the Westham Granite Company was formed, and they united with him in making a transfer to the Westham Granite Company.

Q. At the time this agreement was entered into between the company and Ordway, had you seen his contract?

A. Yes, sir.

Q. Were you aware of the provision in the contract that an assignment of it shall invalidate it?

A. The assignment was made in this way: he was indebted to J. Conduit Smith, Andrews, Ordway, and Green. The firm was in-
281 debted to him for $66,000 for money advanced the previous year. J. Conduit Smith had a power of attorney from Albert Ordway to collect the moneys due from the government for labor and material, and percentage. J. Conduit Smith took stock in the Westham Granite Company for his loan in connection with Andrews, Ordway & Green. The contract still stands in Ordway's name, but the power of attorney to collect the moneys was given to J. Conduit Smith, who was the president of this company.

Q. Has there been any formal assignment of a contract made by Ordway to Andrews, Ordway and Green, or to the Westham Granite Company, or to J. Conduit Smith?

A. Nothing except this (referring to a copy of the agreement in the book which he has produced).

Q. You refer to the agreement, a copy of which is in your book, dated 25th of March, 1874?

A. Yes, sir; and also a power of attorney recognized by the
282 department in Washington, and I think that was given during the fall of 1873.

Q. A power of attorney to J. Conduit Smith?

A. Yes, sir.

Q. Is that document in your office?

A. No, sir; we have never seen that. That is in Washington on file there.

Q. Have you any copy of it?

A. No, sir; that was done before the Westham Granite Company was organized, before I had anything to do with the company.

Q. This agreement contains this clause: [That in consideration of the assignment of the entire interest of Albert Ordway in a certain contract made the 16th day of Nov., 1871, &c.,] what is referred to there by the word "assignment"?

A. That (this agreement) is supposed to be an assignment, I presume. This is the only communication we had from him at that time.

Q. Do you know the contents of that power of attorney to J. Conduit Smith?

283 A. I do not. J. Conduit Smith advanced Andrews, Ordway and Green, I think, $65,000, and he was secured by a power of attorney from Albert Ordway, which authorized him to draw the moneys from the government to reimburse himself.

Q. Do you know what amount of that debt has been paid?

A. None, except J. Conduit Smith took stock in this company and surrendered the notes that Andrews, Ordway & Green gave him, but he still retains the power of attorney.

Q. Does he collect the money that is paid by the government, or does the auditor collect it?

A. He collects it. I think Ordway has been with him in Washington. He has been with Ordway to the Department, and Ordway has receipted in his presence for the money.

Q. Do you know what was the agreement with reference to this
284 contract between Mr. Ordway and the firm of Andrews, Ordway and Green?

A. I have seen their copartnership papers, and that is the only evi-

dence I have of an agreement existing between them. Ordway put in his contract as against their quarries, each having a third interest.

Q. Do you know where those articles are?

A. I think Andrews has them.

Q. They are not in your office?

A. No, sir.

Q. Not where you can reach them?

A. No, sir.

Q. Mr. Andrews is out of town?

A. Yes, sir.

Q. What was the substance of those articles of copartnership, as you remember them?

A. That Albert Ordway was the possessor of a contract with the government, and they owned these quarries in Chesterfield County, and the contract was transferred to them and Albert Ordway, and the capital stock then, or their capital stock, represented some $60,000.

285 Albert Ordway was to derive one-third of the profits arising from this copartnership as his interest.

Q. Was there any reference to the assignment of the contract by Ordway to the firm?

A. No, sir; just refers to it as holding that contract.

Q. So far as you are aware, then, there never has been any formal assignment by Ordway of that contract to any person, or firm, or corporation?

A. No, sir, nothing, with the exception of this agreement, in which the Westham Granite Co. assumed any damages that might arise from the non-fulfillment of the contract (referring to the agreement of the 25th of March, 1874).

Q. Do you know about the operating of the quarry by the foreman of this company?

A. I have no personal knowledge of it. Mr. Grady has that. He can inform you on that matter. He was book-keeper at that

286 time. At the time the Westham Granite Company was formed, the firm of Andrews, Ordway and Green must have owed in the neighborhood of $150,000 for money expended in improvements in developing that quarry. I judge from this fact that they owed him—J. Condit Smith—they owed him $65,000. The Westham Granite Company assumed $42,000 of the debts of Andrews, Ordway & Green, and I believe to-day there are some $36,000 of Andrews & Ordway's debts still unpaid.

Q. When did you first learn Ordway's agreement with Robert G. Shedd with reference to the State Department contract?

A. Within the last three or four months.

Q. Since the suit was commenced against him in the District of Columbia?

A. Yes, sir; that is the first we heard of it.

Q. Who are the officers of your company?

A. J. Condit Smith is president; Albert Ordway is secretary; R. Snowden Andrews, treasurer; John Pickering, auditor; S. S.

287 Green, superintendent the of quarries.

Q. What salaries do they receive respectively?

A. $25.00 each, with the exception of the president; he has no salary as yet.

Q. Why is that?

A. He is just acting nominally as president at present. He does not take any active part in the business.

Q. Has not he a business man here who represents him?

A. I represent him.

Q. Do you receive anything for him?

A. No, sir. Here is the clause referring to our salaries.

Q. You are aware that certain of the shares of this company are held subject to the decision of a referee as to the proportion in which they shall be divided among the members of the firm of Andrews, Ordway, and Green?

A. Yes, sir.

Q. Who is that referee?

288 A. Bradley T. Johnston, of this city, 1,490 shares, so held by him.

Q. How long ago was this matter referred to him?

A. It was referred to him a year ago last March.

Q. Why does he not decide?

A. Because he is a creditor. Albert Ordway is indebted to him to the extent of $5,000. He considers he is not disinterested.

Q. How long has he held himself ineligible for that reason?

A. He has held himself ineligible since February last. He had his decision ready to render, & he advised the other parties that Albert Ordway should settle with him before he should render his decision in the matter, so that he could decide impartially.

Q. Are these shares of the Westham Granite Co. for sale—any of them on the market?

A. No, sir; they are all held by four parties. J. Condit Smith has this stock in trust of Andrews, Ordway, and Green.

289 Q. General Randall yesterday informed me that the company has been engaged in furnishing paving-blocks?

A. Yes, sir; paving-blocks to Baltimore and to Philadelphia last year.

Q. Are they furnishing paving-blocks now?

A. Yes, sir; furnishing paving-blocks to Baltimore.

Q. Is all the surplus material fit for the purpose used in that way?

A. A good deal of it.

Q. What is done with the rest of it?

A. It is thrown over the bank and taken out of the way.

Q. That is, the material that is too small to be used for paving-block?

A. Yes, sir; a great deal is hauled out and thrown on the side track to get it out of the quarries, where we have no immediate use for it. We have a contract with Baltimore now. The city was enjoined, and we stopped but two or three weeks ago.

290 Q. Please refer to the books that you have produced, and inform me, if you can, what amount of money has been received by the company or is now due it for paving-blocks furnished since the organization of the company.

A. About eight thousand dollars.

Q. Is that the amount of money that has been actually received for paving blocks?

A. Yes, sir.

Q. Is there any now due which has not been paid?

A. There are a quantity of blocks in Baltimore, delivered there, but nothing has been paid on them yet. There are $2,700 worth of blocks in Baltimore.

Q. Please state when the power of attorney to J. Condit Smith, to which you have just referred, was made.

A. About September, '73.

Q. How do you fix the date?

A. I was in New York at the time, and Ordway came on and obtained a loan from Mr. Smith. I think it was in September or October, 1873.

291 Q. Was it after the financial panic of '73?

A. Yes, sir; just about that time.

The witness here produces a writing, dated March 25th, 1874, purporting to be signed and sealed by J. Condit Smith, R. Snowden Andrews, Albert Ordway, and Samuel S. Green, which is in the following words and figures:

Whereas, on the 16th day of November, 1871, the United States, by A. B. Mullett, Supervising Architect, made a certain contract with Albert Ordway, of Richmond, Va., for furnishing and cutting granite for the superstructure of a new State, War, and Navy Department building, at the city of Washington, D. C.; and whereas the said Albert Ordway has heretofore, at different times, assigned and transferred certain portions of his interest under said contract to the firm of Andrews, Ordway & Green, and to J. Condit Smith: Now, therefore, the said Andrews,

292 Ordway & Green, and the said J. Condit Smith, and the said Albert Ordway, for value received, do hereby transfer and assign to the Westham Granite Co. of Virginia all their rights, equities, and interests of every kind whatsoever to which they are now or may hereafter be entitled, at law or in equity, and do hereby covenant to execute any further assignment that may hereafter be considered necessary, whenever demanded by the said Westham Granite Co. of Virginia.

Witness our hands and seal this 25th day of March, 1874.

(Signed)	SNOWDEN ANDREWS.	[SEAL.]
(Signed)	ALBERT ORDWAY.	[SEAL.]
(Signed)	SAMUEL S. GREEN.	[SEAL.]
(Signed)	J. CONDIT SMITH.	[SEAL.]

Witness:

BRADLEY T. JOHNSON.

JOHN PICKERING.

I hereby certify that the foregoing is an exact copy of the original assignment produced and identified by the witness.

JAS. O. CLEPHANE,
Examiner.

293 Witness, resuming: When that transfer was made it was only conditional, being subject to the ratification of the Secretary of State. That is one of the conditions in the contract. It says any assignment would have to be ratified by him; and that was drawn up, and that clause inserted in that or any future assignment should be carried out by these parties.

Q. The signatures to this agreement are all genuine?

A. Yes, sir.

Q. Do I understand it was understood at the time this writing was signed by all the parties that it should be valid only if approved by the Secretary of State?

A. Yes, sir; and that last clause was inserted that these parties covenanted to execute and transfer whenever deemed necessary to the Westham Granite Co. of Virginia, because it was agreed by all

294 parties that this paper was invalid unless it was approved by the Secretary of State.

Q. Was the assignment presented to the Secretary of State for approval?

A. Yes, sir.

Q. With what result?

A. It was referred to the Attorney-General, and then the contract was transferred by the Attorney-General to the Secretary of War, and referred by him, and they objected to the transfer. That has been done recently, within the last two or three months.

Q. And no assignment, in fact, has ever been made?

A. None, in fact.

Q. Will you please file this original agreement of the 25th of March, 1874, purporting to assign the contract, with the commissioner as an exhibit to your deposition?

A. I do not feel authorized to part with the original.

Q. This paper, I see, is not a copy of the agreement of the
295 same date in the minutes, or is not this itself the original?

A. That is the original.

Q. Is there any objection to filing this book with the commissioner as an exhibit?

A. Yes, sir; it would be very inconvenient, as we require the book for the use of the company.

Counsel for complainant requests the examiner to make a copy of the minutes, which is done. Said paper reads as follows:

"A meeting of the board of directors of the Westham Granite Co. of Virginia was held in the city of Richmond on the 25th day of March, 1874, in pursuance of a call made by the president.

"Present, J. Condit Smith, R. Snowden Andrews, Albert Ordway, S. S. Green, and John Pickering.

"Following agreements proposed to be made between the company and Albert Ordway in reference to his contract with the United
296 States for furnishing and cutting the granite for the new State, War, and Nevy Department buildings in Washington, D. C., were presented for consideration:

"This agreement, made the 24th day of March, 1874, between the Westham Granite Co. of Virginia and Albert Ordway, witnesseth, that in consideration of the assignment of the entire interest of Albert Ordway in a certain contract made the 16th day of November, 1871, between the United States of America, by A. B. Mullett, Supervising Architect, and the said Albert Ordway for furnishing and cutting the granite for the superstructure of the new State, Navy, and War Departments in the city of Washington, D. C., to the said Westham Granite Co. of Virginia, the said Westham Co. of Virginia does hereby covenant and bind itself to perform all the covenants and obligations of the said contract
297 which the said Ordway is bound to perform as fully and as completely as said Ordway is thereby bound to do and perform. And the said company does also agree and covenant to indemnify and save harmless the said Ordway from all loss and costs and damages which may accrue to him, the said Ordway, by reason of the said company not performing all the covenants and obligations to the performance of which said Ordway is bound by said contract.

"In witness whereof the Westham Granite Co. doth execute this as a signature of the president and treasurer and seal of the company hereto affixed, having been decided so to do by the resolution of the board of directors of said company, held this day and year first before written, and the said Albert Ordway doth hereto affix his hand and seal.

"On motion of Mr. John Pickering the proposed agreement was
298 unanimously ratified, and the president and treasurer directed to sign the same and affix the seal of the company. The board then adjourned."

I certify that the foregoing is an exact copy of the entry in the minutes of the Westham Granite Co., produced and identified by the witness.

JAS. O. CLEPHANE,
Examiner.

WITNESS. I was mistaken in my former statement. Ordway has that original paper, and took it to Washington.

Q. When?

A. When we made application to have transfer made to the Westham Granite Co. That original agreement, here referred to, to the best of my knowledge and belief, is now in Washington, probably in the department.

Q. This contract between Ordway and the Westham Granite Co., of March, 1874, seems to be based upon an assignment of the same
299 date in the contract referred to. That assignment, you say, was to be good only when ratified by the Secretary of State, and such ratification was never obtained. Now, what is the status of the agreement between the company and Ordway?

A. The agreement between Ordway was that the company should conduct the business; contract still remaining in the name of Ordway and the other parties in interest, having the proceeds of the business going to the company, as it did originally, with the firm of Andrews, Ordway and Green.

Q. Do the parties to this agreement of 25 of March, 1874, treat it as binding upon them since the failure to obtain the ratification of the assignment?

A. I could not say there has been no action taken since refusal. Last week we heard that the Secretary had refused.

Q. It was only last week you heard that?

A. Yes, sir.

300 Q. Since that no action has been taken by the company?

A. No, sir.

At the request of counsel for the complainant, the examiner copies from the minu*ets*, produced and identified by the witness, the proceedings of the 28th of July, 1874, which are as follows:

"A meeting of the board of directors of the Westham Granite Co. of Virginia was held in Washington on the 20th day of July in pursuance of a call made by the president. Present, J. Condit Smith, R. Snowden Andrews, and Albert Ordway.

"The following resolution was presented to the meeting and unanimously adopted:

"Resolved, That if the assignment proposed to be made by Albert Ordway of his contract with the United States, dated 16th of
301 November, 1871, for furnishing and cutting the granite for the State, War, and Navy Department buildings in Washington, D. C., to the Westham Granite Co. meets with the approval of the Secretary of *the* State, the president of the company is hereby authorized to sign the necessary papers.

"No further business appearing, the meeting adjourned."

I certify that the foregoing is an exact copy of the entry referred to produced and identified by the witness.

JAS. O. CLEPHANE,
Examiner.

Commission adjourned to meet in Washington, D. C., at the law office of Messrs. Stanton & Worthington, No. 637 F st., N. W., at 11 o'clock, a. m., on Saturday, May 29th, 1875.

JAS. O. CLEPHANE,
Examiner.

302 Q. Do you know anything further touching the matter in controversy of interest to either party? If so, please state it.

A. I do not.

JOHN PICKERING.

Sworn and subscribed to before me this 28th day of May, 1875.

JAS. O. CLEPHANE,
Examiner in Chancery.

Adjourned to meet in Washington City on Saturday, May 29th, 1875, at 11 a. m., at the law office of Stanton & Worthington, No. 637 F st.

JAS. O. CLEPHANE,
Examiner in Chancery.

303 WASHINGTON, D. C.,
May 29th, 1875.

Commission met pursuant to adjournment, at 11 o'clock a. m. Present, A. S. Worthington, esq., of counsel for plaintiff.

After waiting twenty minutes for the appearance of counsel for the defendant, it was concluded to proceed with the examination of the witness, Mr. Albert Ordway, who had been summoned to appear at this session of the commission, and he was in attendance.

Deposition of Albert Ordway for plaintiff.

ALBERT ORDWAY, being of lawful age and being by me first duly sworn to tell the truth, the whole truth and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by Mr. WORTHINGTON, counsel for the plaintiff:

304 Q. State your age, residence, and occupation.

A. I am 32 years of age; I reside in Richmond, Va., and am at present engaged as a contractor.

Q. You are the defendant in this case?

A. Yes, sir.

Q. When did you last leave Richmond?

A. On Monday.

Q. Monday evening?

A. Monday noon; half past two train.

Q. Had you notice before leaving that depositions were to be taken at Richmond on Wednesday in this case?

A. No, sir.

Q. Counsel had not advised you of that fact?

A. No, sir.

Q. Who is your counsel at Richmond?

A. I have none.

Q. Bradley T. Johnson was subpœnaed there in this case, a day or two ago, but declined to testify on the ground that he is your counsel?

A. My counsel in this particular case, do you mean? I suppose he assumes he is my counsel as he is my general counsel. I never re-
305 tained him particularly. He is counsel for the firm. I suppose on that account, the firm being interested in it, he probably considered himself as my counsel.

Q. Did he have notice of the taking of depositions here on or before Monday?

A. I do not know anything about that.

Q. Had you any knowledge of the intention to take depositions there when you left Richmond?

A. One day when I was in Washington, I happened to be in Merrick's office, and Mr. Morris showed me a notice he had gotten of depositions to be taken at Richmond. He simply said, without giving me notice, that he declined to receive notice, or something of that kind. I did not pay any attention to it. I did not think it of any importance anyhow.

Q. Where did you go when you left Richmond last Monday?

A. Went to New York.

Q. And remained there how long?

A. I left New York on Wednesday night.

Q. When was it you were in Mr. Merrick's office and learned
306 that depositions were to be taken at Richmond?

A. I have not the slightest idea. It was simply a passing word.

Q. Where have you been since last Wednesday, when you left New York?

A. In Washington.

Q. Where in Washington?

A. At the place I am always to be found—the Arlington Hotel.

Q. Didn't you go to the Arlington Hotel on Thursday morning and take your breakfast and pay for it and then leave?

A. No, sir.

Q. Did you not have it marked as paid for?

A. No, sir; I have not paid my bill yet.

Q. Did not you some arrangement made with the clerk to the effect that you were to be marked as "gone away" after breakfast?

A. No, sir; not the slightest.

Q. Nothing of the kind?

A. No, sir; in fact, I was around the hotel until, it must have been, 10 or 11 o'clock.

Q. In what part of the hotel were you?

307 A. It seems to me those questions do not amount to anything. What do you want to get at? Are you endeavoring to learn whether I tried to avoid the service of a subpœna? I had not the slightest idea of it, and did not pay any attention to it. I went to New York to attend to my private business. I had no objections to testifying, if that is what you want to get at. What has the question as to what particular part of the hotel I was at to do with the case between Shedd and myself? I may have been in my chamber or in the water-closet. I might have been about the hotel all the time playing billiards, or attending to my business when I was not at the departments.

Q. Did the clerk inform you at any time on Friday that a person had been looking for you?

A. I am sure I cannot tell, probably there were a half a dozen who came to the hotel to see me, and the clerk would very often say, "Sev-

eral persons have been here to see you," or "have left cards for you."

308 Q. You do not remember whether he said anything about anybody having looked for you or not?

A. Probably a dozen times a day he will tell me that people have been here to see me. He did not tell me any person in particular. I suppose if there had been any person in particular who was very anxious to see me he would have left his card.

Q. Were you about the hotel all day on Thursday?

A. No, sir.

Q. Where did you go?

A. To attend to my business about the city.

Q. Where?

A. Well, I went into Shoomaker's & Hertzog's as one place.

Q. Where else?

A. To the office of Public Grounds and Buildings.

Q. Any other place?

A. No, sir; I came back from there about 12 o'clock, and then was there nearly all day, at the hotel.

Q. In your room?

309 A. No, sir; in the billiard-room.

Q. When were you served with a subpœna under which you came here to-day?

A. Last evening.

Q. Is the person present who served you?

A. I do not know.

Q. Wasn't it Albert Harper, who is here present?

A. It might have been. I did not look at him particularly.

Q. Did he ask you on what day it would be most convenient for you to come here to testify, or anything to that effect?

A. Something to that effect. I do not remember the words. I asked him when it was, and he said on Monday, I think, or to-day. I said I should much prefer it to-day, because I was going home to-morrow night, and it would be very inconvenient for me to be here on Monday.

Q. At what hour was that?

A. I do not know. I suppose from seven to eight o'clock.

Q. Yesterday evening?

310 A. Yes, sir.

Q. Have you seen your counsel since then?

A. Yes, sir.

Q. When?

A. I saw them this morning.

Q. Did you go to inform them last night of the subpœna?

A. No, sir.

Q. Sent word to them?

A. No, sir.

Q. What hour to-day did you see them?

A. About half past ten.

Q. Was a copy of the subpœna left with you last night?

A. Yes, sir.

Q. What did you do with that?

A. Put it in my pocket.

Q. Did you show it to your counsel this morning?

A. Yes, sir.

Q. When you came here this morning, did I offer to send to your counsel if you desired to have them present?

A. Yes, sir.

311 Q. Do you remember your reply?

A. I do not remember the words of it—simply that it was not necessary, or it would not make any difference to me, or something of that kind.

Q. Do you remember being in Washington about the 4th of January last, and on that day receiving about eighteen thousand dollars from the government on account of the State Department contract?

A. If that is the day I was paid, it was the fourth of January, but I cannot fix the day.

Q. You remember, however, receiving the money?

A. At some particular time.

Q. Do you remember receiving that amount of money at or about that date?

A. I drew my December account somewhere about the early part of January. I do not remember the day.

Q. At what hour of the day did you receive the money on the checks?

A. Somewhere about the middle of the day.

312 Q. Cannot you remember more definitely the hour?

A. No, sir; somewhere about the middle of the day, I reckon.

Q. From whom did you receive the checks?

A. From Colonel Morgan, the disbursing officer of the department.

Q. Who was present that you remember except yourself and the disbursing clerk?

A. J. Condit Smith.

Q. Did J. Condit Smith come to the city that day by pre arrangement between you and him, or was your meeting accidental?

A. I cannot remember.

Q. You have no recollection at all on that subject?

A. None in the world. We were constantly writing and telegraphing each other. I cannot tell whether I met him here by appointment or accident.

Q. Was he stopping at the Arlington Hotel on that day?

A. I do not know. Sometimes he stops at the Ebbitt and

313 sometimes at the Arlington. I do not know where he was stopping then.

Q. You cannot remember whether on that day he was stopping at the same hotel you were, or not?

A. No, sir; I think he was. He generally stops there when his wife is not here.

Q. Did you go to Washington on the day you received that money?

A. I do not remember.

Q. Do you remember whether you had been here a week?

A. I have not the slightest idea.

Q. No idea at all?

A. No, sir.

Q. Do you remember where you met him that day before going to the State Department to get these checks?

A. No, sir.

Q. You do not remember whether you met him at the hotel or at the department?

A. No, sir; but the probability is we went up to the department together. I do not remember. That is the probability.

314 Q. Did you receive the checks from the disbursing clerk, or did Mr. Smith?

A. I suppose that I received them.

Q. You do not remember that either?

A. As a natural sequence of events he would hand them to me. We were both standing there.

Q. What did you do with them?

A. There was one check of fifteen hundred dollars that was due Col. Smith by the company, endorsed payable to him, and he took it. The other checks I endorsed payable to the Westham Granite Company.

Q. What did you do with them?

A. I handed them over to him, and asked him if he would ——. No, I put them in my pocket, I guess.

Q. Three of them, and gave one to him?

A. I think there were three. One check was to him, and the balance I endorsed, payable to the Westham Granite Co., and put them in my pocket. Oh, I think he told me if I was not going down that
315 night, I had better send them; and, if not, why to take them. I think there was such a remark made.

Q. Why did he go to the State Department with you?

A. He was always in the habit of going when he was here. He is president of the company.

Q. Why did he go when the checks were always handed to you?

A. You will have to ask *to ask* him. I do not know.

Q. What did you do with the remaining checks you put in your pocket that day?

A. I handed them over to the auditor of the company.

Q. His name?

A. John Pickering.

Q. When and where?

A. At Richmond, at the office of the company.

Q. When?

A. The next morning.

Q. Did you leave Washington the evening you received the checks?

A. Yes, sir.

316 Q. And carried the checks in your pocket?

A. Yes, sir.

Q. And handed them to Pickering the next day?

A. Yes, sir.

Q. Had they been out of your possession from the time you received them from the disbursing officer of the State Department until you delivered them to Pickering?

A. I do not think they had.

Q. You were served with a writ in this case on the evening you received these checks, were you not?

A. Yes, sir.

Q. A copy of the writ was left with you?

A. Yes, sir.

Q. Where is that writ now?

A. I have not the slightest idea; it is torn up, I suppose.

Q. Please look at the "Answer of defendant to amended & supplemental bill," filed in this case 3d March last, purporting to be signed by you, and to have been sworn to by you before Woodbury B. Bigelow, notary public, at Richmond, Va., on the 23d of
317 Feb., 1'75, in which you say: "For answer to interrogatory No. 18, I state that I transferred the said checks or drafts immediately upon their receipt in the office of said Morgan, at 2 o'clock in the afternoon on the fourth day of January, A. D. 1875, to the said J. Condit Smith and the Westham Granite Co.; as hereinbefore stated, the said J. Condit

Smith receiving one of said checks in his individual capacity for his own use, and the other three for the said company and as its president." State whether this answer was sworn and subscribed by you, as it appears to have been, and whether the Morgan therein referred to is the disbursing clerk to whom you have just referred.

A. Yes, sir.

Q. You recognize the document?

A. Yes, sir; I recognize my signature.

Q. This Morgan is the disbursing clerk to whom you have just referred?

A. Yes, sir.

318 Have you any explanation to offer of the contradiction between your statement under oath on the 3d of March, 1875, and your statement under oath to-day?

A. There is not any contradiction that I can see.

Q. There is no contradiction?

A. No, sir. What do you allude to?

Q. Was this answer read by you before you signed it?

A. I do not remember whether it was or not.

Q. Are you in the habit of signing and swearing to papers without knowing their contents?

A. The counsel draw them up. I do not bother myself about them.

Q. It is sufficient for you to know that your counsel has drawn a paper to justify you in swearing to it without knowing its contents?

A. If I am in a hurry I do.

319 Q. In this answer you are made to say "at 2 o'clock on the afternoon of the 4th of January, 1875, you transferred the four checks you received on that day to Mr. Smith, he receiving one of them for his own use, and the other three for the company." Is that statement true?

A. I do not see any conflict between that and the other. I said before that the checks were handed to me, and I endorsed them there; I endorsed one to him, and the others to the company. That is what I state there. I do not see any discrepancy in that.

Q. Did you say to day, in answer to my questions, that he received three of those checks for the company and as its president?

A. I do not remember how I put it. You asked me what I did with them, and I told you I could not remember exactly what I did with them.

320 Q. Did you not say you put them in your pocket, and kept them until the next morning, and then delivered them to Mr. Pickering?

A. That is after he handed them back to me to put them in the mail, but he said if I was going myself to carry them; and I put them in my pocket.

Q. Is that the only explanation you have to offer of this seeming contradiction?

A. You must excuse me, but I do not understand that there is any contradiction. I endorsed the checks, and handed them over. They did not belong to me. They were not my property. The disbursing officer draws the checks payable to my order simply, because I am known to the department as the contractor, but they are not my property.

Q. When did you hand them over?

WITNESS. To whom—to the company? I handed them over to Mr. Smith at the desk, and to Col. Pickering the next morning.

Q. At whose desk?

A. Col. Morgan's desk in the department.

321 Q. In his immediate presence?

A. I have not the slightest idea. He may have been on the other side of the room. I do not know where he was.

Q. Were there any other clerks or persons there?

A. I do not remember, I am sure.

Q. How long did Smith retain them?

A. Prehaps five minuet's, or prehaps fifteen minuet's.

Q. Did he hand them back to you then?

A. Yes, sir; in the office there.

Q. Did you retain them until you handed them to Pickering?

A. Yes, sir.

Q. What endorsement did you make on each of those checks?

A. "Pay to the order of the Westham Granite Co., Virginia. Albert Ordway."

Q. Did you sit down to a desk in the disbursing-clerk's office to make these endorsements?

A. No, sir; I stood up.

Q. Stood up at a desk there?

322 A. Yes, sir.

Q. To a desk in that office?

A. Yes, sir.

Q. At the time you received these checks which you kept, what did you intend doing with the money?

A. Why, I could not have the money, I merely turned them over to the Westham Granite Co. I turned them over to the president of the company, and they ceased to be mine.

Q. Did Smith make any endorsement on them before he returned them to you?

A. No, sir.

Q. Was any endorsement by him necessary?

A. No, sir.

Q. Who, at Richmond, was authorized to endorse for the company?

A. The treasurer and the auditor.

Q. Where does Mr. Smith reside?

A. In Buffalo, New York.

Q. Had he on the day you received these checks said anything about going to Richmond with you?

323 A. I do not remember.

Q. You do not remember anything of that kind?

A. No, sir.

Q. Why did you hand the checks to him at all?

A. Because they belonged to him as president of the company.

Q. Is it customary for him to go there with you to see the checks?

A. Sometimes, and sometimes not.

Q. How often did he go with you?

A. I do not know.

Q. Did you always, when he went up there, go through the form of handing the checks over to him, and then receiving them back from him?

A. Yes, sir.

Q. How often did you do that?

A. I have not the slightest idea.

Q. Did you do it frequently?

A. I am sure I have not the slightest remembrance. I cannot
324 remember all such details as that in the course of transacting business.

Q. Yet very frequently he went up there with you, and you got the checks and handed them to him, and he immediately handed them back to you?

A. Whether it was very frequently or not, I cannot say, because Smith had my power of attorney to draw the money, and they said to the disbursing officer when he was not there to give me the check. He told the disbursing officer to that effect. I had not any power over this money. It did not belong to me. He had the power of attorney to draw it. Sometimes he could not come to Washington, it would be inconvenient for him, and consequently, having sufficient trust in me, he would tell the disbursing officer he could not come, and to give the checks to me.

Q. For what reason was this check for fifteen hundred dollars given to Mr. Smith for his own individual use?

325 A. The company was indebted to him.

Q. To what amount?

A. I do not know; a great many thousand dollars; probably twenty-five or thirty thousand dollars.

Q. It was indebted to him that much at that time?

A. Oh, yes, sir.

Q. How was the amount of fifteen hundred dollars fixed on as the amount to be paid him from this sum of eighteen thousand dollars?

A. I do not know. I did not keep the books. There might probably have been a note of acceptance due, or something of that kind.

Q. Do you not remember?

A. No, sir.

Q. Did he receive a part of the money that you collected from the government each month in this same way?

A. No, sir.

326 Q. Was this the first instance of the kind?

A. That he was ever paid by United States check—yes, sir; I think it was.

Q. Did he ordinarily receive a part of the money collected from the government each month, either by United States check, or otherwise?

A. No, sir. The acceptances were paid whenever they became due; if one of them happened to come due at that time, I suppose it was paid out of that money.

Q. Did Mr. Smith go with you when you left the State Department that day?

A. We came away together.

Q. Where did you go?

A. I do not know; I suppose I went to the hotel.

Q. Did Mr. Smith go with you?

A. No, sir; I think not. I do not think I saw him again after that.

327 Q. Did he come here for the specific purpose of receiving this fifteen hundred dollars?

A. That I do not know. He is not the kind of a man that would do that.—who would come from Buffalo for fifteen hundred dollars.

Q. Where were you when the injunction was served on you that evening?

A. At the Arlington Hotel.

Q. Had you the three checks in your pocket at the time?

WITNESS. You had better change that word "injunction" to "restraining order." Is not that correct?

COUNSEL. Please answer the question.

A. Yes, sir.

Q. When did you obtain the contract for furnishing granite for the State Department?

A. In 1871.

Q. In what year?

A. In 1871.

Q. At that time, who, if any person, was interested with you
328 in obtaining the contract?

A. Nobody.

Q. Had you the means and facility for carrying on the work yourself?

A. No, sir.

Q. Had you made arrangements before obtaining the contract with anybody to assist you in that regard?

A. Yes, sir; I had for carrying on the work.

Q. Who were the persons?

A. Andrews & Green.

Q. Anybody else?

A. No, sir; not at that particular time; somewhere about that time; also with Andrew Washburne.

Q. Who is Andrew Washburne?

A. A citizen of Richmond.

Q. What is his business?

A. He has none.

Q. What was his business in 1871?

A. Pension agent.

329 Q. What was your arrangement with Washburne?

A. It is on file in the State Department—the copartnership between him and myself; the general outline of it was that he was to furnish the capital and conduct the work of cutting the stone for the south wing of the State Department.

Q. When was this arrangement entered into with Washbourne?

A. I do not remember the date.

Q. Before or after you obtained the contract?

A. I do not remember the date that the papers were drawn on. The arrangements were made before the contract, and I suppose the papers were drawn before the contract. I am not certain. The date is on the papers.

Q. You do not remember whether the papers were drawn before or after you obtained the contract?

330 A. No, sir; I suppose not. They may have been drawn before, but I cannot give the date. The contract was changed twice.

Q. How long did he continue to be pension agent there, at Richmond?

A. Until this last spring.

Q. How long did your arrangement with him last?

A. Until the completion of the south wing of the State Department.

Q. Now, what was the substance of your contract with him?

A. I have given in the first question the outline of the copartnership, which was that he was to furnish the capital and conduct the work of cutting the stone for the south wing of the State Department.

Q. What were you to pay him for this?

A. He was to receive all the profits of the cutting.

Q. For how long?

331 A. Until the completion of the south wing, as long as the partnership lasted.

Q. And did he actually receive all the profits made on the cutting of the stone for the entire south wing?

A. He and the assignee.

Q. Who is his assignee?

A. R. Snowden Andrews. He bought him out some time afterwards. He bought out his interest in that copartnership. You might say in there that he did not receive all; because there was a subsequent amendment made to that copartnership, under which we were to receive a part of it.

Q. Who do you mean by "we"?

A. The firm.

Q. The firm of Andrews, Ordway & Green?

A. Yes, sir.

Q. When was that copartnership formed?

A. Fourth of August, '71.

332 Q. Were those articles of copartnership in writing?

A. Yes, sir.

Q. Have you the original articles or a duplicate of them in your possession, or subject to your control?

A. I have a copy of them. I do not know but one of the originals.

Q. Where is it?

A. In Richmond.

Q. Have you any copy of the original agreement between you and Mr. Washburne?

A. No, sir; it is on file in the State Department.

Q. When was it filed there?

A. When the contract was entered into.

Q. What contract?

A. With the Government. The Government required to be notified of anybody who had any interest at the time. It all belonged to him, in fact.

Q. What all belonged to him?

333 A. All the cutting that he did on the work, and he was to have the profit of it. All we did was to furnish the stone.

Q. What was the date of your agreement with Washburne?

A. I do not remember the date of it.

Q. Or about the time the contract was entered into? Who were the parties to that agreement—yourself and Washburne?

A. Yes, sir.

Q. Was that made before or after you entered into the copartnership with Andrews & Green?

A. I do not know whether the papers were drawn after the agreement was made at all.

Q. The agreement with Washburne was before the copartnership arrangement?

A. Yes, sir; I do not know whether the papers had been drawn before not.

Q. How long before?

A. That I do not know.

Q. About.

334 A. It may have been a month. Have not the slightest idea.

Q. Where were you residing at that time?

A. In Richmond.

Q. Where was your cousin, Geo. F. Ordway, residing?

A. In Boston.

Q. Was there any business connection between you and him at that time?

A. Somewhere about that time we made arrangements together.

Q. What was the substance of the agreement between the members of the firm of Andrews, Ordway and Green?

A. Merely a copartnership.

Q. What did you furnish to the copartnership?

A. The contract.

Q. What did Andrews furnish?

A. Andrews & Green furnished the property.

Q. Do you mean the quarry?

335 A. Yes, sir; I furnished the contract.

Q. Did you make an assignment of the contract at that time?

WITNESS. To Andrews, Ordway & Green?

COUNSEL. To them or to anybody else.

A. I made an assignment of the contract when I entered into copartnership with them, and in that way I put it into the partnership to be executed.

Q. Was there any assignment made except as it is contained in the articles of copartnership?

A. You cannot make an assignment of a Government contract.

Q. Then there was no assignment?

A. No, sir; that would violate the contract. The assignment of a Government contract makes it null and void.

Q. Knowing that, you did not attempt to assign the contract to them?

336 A. No assignment to them; the very thing would make the contract itself null. The assignment of a government contract renders the contract null and void under the law.

Q. Did you have any agreement with Andrews & Green with reference to the State Department contract, except as the same is contained in the articles of copartnership?

A. None at all.

Q. That shows fully the relations between you and them from the fourth of August, 1871, down to what date?

A. From the date of the dissolution of the copartnership.

Q. When was that?

A. Either February 4th or 24th of March. I do not remember which.

Q. 1874?

A. 1874.

337 Q. Then the arrangement was made by whom?

A. By me, or by the firm.

Q. By you or by the firm?

A. The firm. I do not know how to express it. We formed a joint stock company. The Westham Granite Co. of Virginia.

Q. Was the agreement by which the Westham Granite Company took the place of the firm made in *in* writing?

A. No agreement except a deed; we simply deeded to them all our property.

Q. Was that all that was done about the matter?

A. Yes, sir. The company was formed and incorporated, and then the concern of Andrews, Ordway and Green, collectively and individually, conveyed by deed all the personal property of the firm to the company.

Q. Was there any assignment made or attempted to be made at about the time of the formation of the Westham Granite Company?

A. No, sir. You cannot make an assignment of a government contract.

Q. Was there no attempt to make any?

338 A. I agreed to make an assignment of the contract to the company if the government would approve it. But they did not, and it had the same effect, as far as the company was concerned, as though it did. I held myself liable, and the company entered a bond to me that they would fulfill my contract and save me harmless, and I gave the president of the company a power of attorney to draw money. It did not belong to me.

Q. There was an assignment made then, subject to the ratification of the proper authorities?

A. No, sir; there was not. There was an agreement to make an assignment in case the government should approve of it.

Q. Did not you and Mr. Green and Mr. Andrews sign a formal assignment of the contract, and your respective interests in it, to the Westham Granite Company, on the 24th day of March, 1864?

A. Mr. Green and Mr. Andrews could not assign the contract because it did not stand in their name.

339 Q. Question repeated.

A. I have no remembrance of any such paper.

Q. Was any attempt made to get the consent of the Secretary of State to an assignment of the contract?

A. Yes, sir.

Q. With what result?

A. I appl'ed to the Supervising Architect to know if he would do it, and he said he would not. That was the end of it. I did not go to the Secretary of State. I applied to the Architect to know if he would agree to the transfer of the contract to the party, and he would not do it.

Q. Then there has never been any assignment of the contract to the Westham Granite Company?

A. No, sir.

Q. It stands to-day in your name with no assignment to anybody?

A. No, sir. The contract itself does.

340 Q. Do you remember that there was a writing signed by the Westham Granite Company, by which, in consideration of your assignment, or agreement to 'sign, they undertook to carry on the contract for you and to save you harmless?

A. Yes, sir; of course they agree to do that.

Q. My question is, whether there was a writing made to that effect?

A. Yes, sir.

Q. Was not a copy of that writing placed upon the minutes of the company?

A. Yes, sir; I suppose it was.

Q. Now do the assignments—supposing there to be one—the agreement, signed by the company to which you have just referred, and the act incorporating the Westham Granite Co., show fully the relations between you and the members of the firm of Andrews, Ordway and Green, and the Westham Granite Co. at the present time?

A. They do, excepting this: that they do not show the interest of the respective parties in that company.

341 Q. How has that been determined?

A. It has not been determined yet.

Q. To what extent has any effort been made to determine it ?

A. The effort has been made by Andrews, Ordway, and Green to pay their debts in order that they might divide their assets if there be any, and close up the firm.

Q. Have not a certain number of shares been allotted to Mr. Smith ?

A. Yes, sir; but he did not belong to the firm; he bought a certain number of shares and paid for them.

Q. Has not a certain number allotted Mr. Pickering ?

A. He bought one; the remaining shares have been assigned to the firm of Andrews, Ordway, and Green.

Q. And those shares allotted to the firm have not yet been divided among the members of the old firm ?

342 No, sir; for the reason that we have not paid our debts up.

Q. To whom was the matter of making this allotment among the members of the firm referred ?

A. To Andrews, Ordway & Green. After the settlement their own business, they referred the matter to Bradley Johnston.

Q. When ?

A. About a year ago.

Q. Has he pronounced any decision ?

A. No, sir; not yet.

Q. Has he given any reason why he does not pronounce one ?

A. Yes, sir.

Q. What is it ?

A. We have not paid our debts yet.

Q. Are you certain that it is the debts of the firm that stand in the way ?

A. I suppose that is the principal reason; we cannot divide our assets until we pay our debts.

Q. Is that the only reason Mr. Johnson has given for not proceeding ?

343 A. Different reasons from time to time; it took a long time to settle the books up.

Q. Is that the only reason; the only obstacle in the way to your knowledge ?

WITNESS. What, at this present time ?

COUNSEL. Yes.

A. I do not know of any other obstacle he has got, unless it be the payment of a debt that I owe him; he don't want to act as an arbitrator while I am a debtor of his; I do not know that he would make that point, however.

Q. Has he not made that point expressly, over and over again ?

A. Well, he has made it and unmade it, and made it again.

Q. When did he first make it ?

A. I do not remember.

Q. About how long ago ?

A. In the fall some time.

Q. Last fall ?

A. Yes, sir.

344 Q. When did you become personally his debtor ?

A. About a year ago.

Q. How did you become his debtor ?

A. By a loan he made me.

Q. What amount ?

A. Ten thousand dollars of Virginia consol bonds.

Q. What was their value ?

A. I do not know. They are worth about fifty-five or fifty-six cents, with the coupons on. They will be worth about six thousand dollars, I reckon.

Q. Did he take a note or other obligation, alone; and, if so, what was it?

A. A promise to pay it back.

Q. To pay it back when?

A. Six months, I think, was the time.

Q. Are you certain about the time?

A. No, sir; I am not certain; but I think it was about six months.

Q. This loan was last fall?

A. No, sir; about a year ago.

Q. When did the obligation mature?

345 A. Six months after the time it was given. I believe it was some time along December or January.

Q. Did Mr. Johnson decline to act because of your indebtedness to him, long before the note matured, or did he make the point afterwards?

A. I do not remember that.

Q. You have no remembrance at all?

A. No, sir.

Q. Is not that the only obstacle in the way of an apportionment of the shares among the members of the firm by Mr. Johnson at the present time?

A. I suppose it is. I do not know of any other.

Q. How long has Mr. Johnson been your counsel?

A. He has always been the counsel of the firm. I never had any law business myself. I suppose it is all one thing, however.

Q. Do you know Dr. John T. Goddard?

A. Yes, sir; I have met him.

Q. When did you make his acquaintance?

346 A. I do not remember exactly the time it was.

Q. About when?

A. About a year ago, or something of that kind. It may have been two years. I do not remember. I do not keep a diary.

Q. About what matter did you first become acquainted with him; was he agent of Mr. Shedd?

A. He came to me about Mr. Shedd's matter; I do not know whether he was the agent or not.

Q. Did he come to Richmond to see you, in the first place?

A. I do not remember; I think I met him in New York first.

Q. And afterwards in Richmond, did you not?

A. He has been in Richmond.

Q. Do you remember meeting him and Mr. Aaron F. Perry, of Cincinnati, in Washington, about 1874?

A. I have met them here, but I cannot say what the date was.

Q. Was it not about the time the Westham Granite Co. was

347 formed; just before it was formed?

A. I do not know; I reckon it was somewhere about that time; I do not remember.

Q. Do you remember telling Mr. Goddard that a corporation was about to be formed; that you would have a number of shares in the corporation; that you would give new obligations as soon as you obtained these shares on account of Mr. Shedd's debt, and hypothecate your shares in the corporation to secure the obligations?

A. I do not remember what words I told him. I gave him to under-

stand after the business was settled up, if I had any interest in it——

Q. Did you not tell him, without qualification, that you would, as soon as you obtained your shares, which you expected would be very soon, pledged them as security for this indebtedness?

A. No, sir; I told him, some proposition. I wanted to see Mr. Shedd out, if I had anything to do it with.

348 Q. Do I understand you to deny that you agreed to so hypothecate all your shares?

WITNESS. Hypothecate all my shares?

COUNSEL. Yes.

A. Certainly.

Q. Do you think that you agree to hypothecate any of them?

A. Certainly. I made no agreement. A man cannot make an agreement he gets the thing.

Q. Please look at these, purporting to be signed by you, addressed to John T. Goddard, dated respectively April 1st, 1874; April 11th, 1874; April 28th, 1874; June 10th, 1874; August 21st, 1874, and October 14th, 1874, and state whether they are in your handwriting, and were sent by you to Dr. Goddard at or about the time they bear date.

A. Yes, sir; they are all in my handwriting.

Q. Were they sent by you to Dr. Goddard?

A. Yes, sir; I suppose so. They were written by me.

(Letters introduced in evidence made a part hereof, and marked Exhibits No. 1, 2, 3, 4, 5, 6.)

349 Q. In the supplementary answer signed and sworn to by you and filed in this case on the 12th of May, 1873, you state that the total amount paid by the United States on account of the State Department contract, is $1,392,142.15. Is that amount stated from recollection or did you obtain the information from writings or books?

A. From books.

Q. What books?

A. Not from books either; obtained from copies of the monthly accounts of the government's.

Q. Where are those copies of the monthly accounts of the government?

A. I have got them.

Q. At Richmond?

A. Yes, sir; no, I have not got them all either, because part of them belong to the company.

Q. These accounts are in your possession or in the possession of the company of which you are the secretary?

350 A. I suppose you will call them in my possession. They belong to the firm—the new ones; and the old ones belong to the company.

Q. But all in your possession at the present time?

A. Yes, sir, principally.

Q. Then you say of this amount the sum of $1,146,393.95 has been paid by the government on account of the labor, tools, shops, sheds, material, and insurance. Where did you get that information?

A. All taken from the accounts with the government.

Q. Accounts kept by whom?

A. By me. I render every month a monthly voucher to the government. They simply pay the total amount of labor back again.

Q. Next you state that the sum of $72,677.82 was paid on account of the granite furnished. Where did you get that information?

A. From the government accounts.

Q. In your possession?

351 A. No, sir; Those accounts are not in my possession. The government makes those out themselves. They have a sworn measurer, and they make up that account themselves.

Q. Where did you get the information from which you made up that statement?

A. From the architect's office, here in Washington.

Q. Then you say that the sum of $173,080.38 has been paid on account of the 15 per centum mentioned in the contract; how did you make up that account?

A. From the retained copies of the government vouchers.

Q. Now in your possession?

A. Yes, sir.

Q You say that of this last mentioned sum, $94,884.29 was paid over by the State Department to Andrew Washburne for the cutting of the granite. Where did you get the data for that sum?

A. From the same source.

Q. The papers are in your possession?

352 A. Yes, sir.

Q. From what were those government accounts made up?

A. From the government account-book; by the government's superintendent.

Q. From the books kept by Gen. Randall?

A. Yes, sir.

Q. In this same answer you state that the receipts on account of the contract with the Western Union Telegraph Co. were $147,272.37; where did you obtain those figures?

A. That was the amount of the contract.

Q. That was the amount to be paid on the contract, and it was all paid in full?

A. Yes, sir.

Q. Where is the contract?

A. I do not know. I suppose there is a copy of it among our papers.

Q. Where is the original?

A. I mean that the original is probably among our papers.

Q. Where did you obtain this sum to put in your answer?

353 A. I say that was the amount of the contract with them. We agreed to furnish the contract for their building for the sum of—— Do you state it from recollection?

A. No, sir; I state it from the contract—the papers and the books.

Q. What books?

A. The books of the firm of Andrews, Ordway and Green.

Q. What books do they keep?

A. They keep the books the same as anybody else keeps them.

Q. Please name the books they kept.

A. I could not answer that; probably a dozen or twenty of them.

Q. Please name as many of them as you can.

A. Well, they kept day-books, and cash-books and ledgers, and time-books, letter-books, store-books, and quarry-books, and all the books anybody in business would usually keep.

Q. In which of these books did they enter the receipts and dis-

354 bursements of the Western Union Telegraph Co. contract?

A. Passed through all the books.

Q. In what book were the original entries made?

A. In the cash-book, of course.

Q. Kept by whom?
A. Kept by me.
Q. Where is that cash-book?
A. It is among the books and papers of the firm at Richmond.
Q. What class of entries was made in the day-book?
A. Whatever happened. The day-book is a journal and diary.
Q. When money was received and paid out on account of the Western Union Telegraph contract, was it entered on the cash-book and in the day-book?
A. I suppose so.
Q. If you kept the books, don't you know?
A. A man keeping the books, he enters his accounts through his books; just sees they are entered; that is sufficient. Passing
355 through all the books, letters, journals, cash-books, and everything else, don't you?
Q. The original entries were made in the cash-book, you say?
A. Yes, sir.
Q. They were transferred from that book to what other book?
A. Transferred to the journal.
Q. By "journal," do you mean "day-book"?
A. General day-book.
Q. The same thing?
A. Yes, sir.
Q. From the journal or day-book to the ledger?
A. Yes, sir.
Q. Did you keep these books during the entire time of the carrying-on of this business with the firm of Andrews, Ordway & Green?
A. Yes, sir.
Q. Were all the receipts and expenditures on account of this contract on account of the Western Union Telegraph Co. contract, and the contract with the State Department, entered in this book?
356 A. Yes, sir.
Q. Where are that cash book, journal and ledger now?
A. Among the records of the firm.
Q. At Richmond?
A. Yes, sir; I can get the original contract itself, if you want it, showing what is the amount of the contract.
Q. Since the organization of the Westham Granite Co., who has kept the books of the company?
A. The auditor.
Q. Mr. Pickering?
A. Yes, sir.
Q. What are your duties as secretary?
A. Well, cutting—taking charge of the cutting yard.
Q. Does Mr. Pickering keep the accounts of the expenses and receipts on account of the cutting business?
A. Yes, sir; he keeps all the books of the company regularly.
Q. Do you keep any books?
357 No, sir.
Q. In making up this statement of receipts and expenditures, have you included all the receipts of the firm of Andrews, Ordway & Green and of the Westham Granite Co. from the time you entered into the State Department contract until you made up your statement?
A. Yes, sir.
Q. What is the size of the stones furnished the State Department under the contract?

A. They are of all sizes; no particular size; they run from a cubic foot up to a great many cubic feet; every stone in the building is of a different size.

Q. What is their average size?

A. I cannot tell you that. I never averaged them.

Q. What is done with the material taken from the quarry, not used by the government under the State Department contract?

A. Whatever we quarry it for.

Q. Do you furnish any paving stones from that quarry?

358 A. Oh, yes, sir.

Q. Have you been engaged in furnishing paving block during the entire time covered by this contract?

A. Only to a small extent; we don't make a regular business of it.

Q. Have you furnished any rubble stones?

A. Oh, yes, sir.

Q. Now what have been your receipts on account of the paving blocks?

A. They are all included in that account. There is an item there of outside sales, I think you will find on that account.

Q. This item "sundry sales of granite, $16,364.01," includes, I understand, all the receipts outside of regular contracts?

A. Yes, sir.

Q. Includes all the receipts on account of paving blocks and rubble stones sold in the past three years?

A. Yes, sir; since we begun up to the present time.

359 Q. Now we go to the other side of the account. You state that there has been disbursed on the labor account $362,499.73; was that sum obtained from the books kept by you and by the auditor?

A. Yes, sir.

Q. What is included in it?

A. All amounts paid for labor.

Q. Nothing else?

A. No, sir; except for labor done by government.

Q. Next comes "expense account, $62,267.06." The expense account seems rather big; please tell us what it means.

A. It means all expenditures for which there is no property received in return for the expenses.

Q. That is rather indefinite still; cannot you make it a little more specific?

A. Well, we had two classes, material and expense account; if you spend a dollar and get it back in the shape of something that you are going to use, that is material. If you spend a dollar and there

360 is no tangible return, that is expense.

Q. Do your books show the item of which this sum, $62,000 and over, is made up?

A. Of course.

Q. Do they show the person to whom the money was paid?

A. Yes, sir, A large part of it was for salaries. Our salaries were to be $12,000 a year.

Q. That is included in the expense account?

A. Yes, sir.

Q. Who are the salaried officers beside the officers of the company?

A. Well, we have a foreman, a book-keeper, a shipping-clerk, a store-clerk, a draftsman, and other people, according to the necessities of the business.

Q. It appears from the statement made up by you in your answer that

the entire receipts of the firm and the company for granite furnished since you obtained the government contract aggregated about $340,000,
361 including the receipts of the Western Union contract and the Centennial building contract.

Q. And it further appears that during the same time the expenses on account of labor alone aggregated over $362,000, without reference to salaries of officers and discount & interest, real estate account, tool account, material account, transportation and freight, and various other large items. How do you account for this?

A. We have spent more money than we have received.

Q. You are still carrying on the business, I believe?

A. Yes, sir.

Q. You are now preparing to resume work?

A. Yes, sir.

Q. Do you expect to continue at the same rate hereafter?

A. No, sir.

Q. Then what is the difference between what you have done in the past and what you expect to do in the future?

362 A. Under the cutting of the south wing of the State Department Mr. Washburne's share of the profits exceeded $94,000, which we did not receive.

Q. Now what had Mr. Washburne done in consideration of receiving this large sum of money in the way of profit?

A. He entered into an agreement with me of copartnership.

Q. What had he done besides entering into an agreement of copartnership?

WITNESS. About what?

Q. What had he done to entitle him to receive the sum of nearly $100,000 as profit?

A. I agreed to give it to him; that is sufficient.

Q. Did you agree to give it to him without any consideration?

A. I decline answering that question.

Q. Why do you decline to answer the question?

A. I decline to answer that.

Q. Why?

A. I decline to answer that. I do not care to say upon what consideration; that is a matter between he & I alone.

363 Q. Did he advance any money to assist in carrying on this contract?

A. I decline to answer that.

Q. Did he furnish a quarry or help to furnish it?

A. No, sir.

Q. Did he furnish any men to get the granite out of the quarry?

A. He had nothing to do with the quarry. His contract was in the cutting.

Q. What did he do about the cutting?

A. He carried it on under his copartnership.

Q. Did he give any personal attention to the matter?

A. Yes, sir.

Q. Was he a pension agent at the time?

A. Yes, sir.

Q. At Richmond?

A. Yes, sir.

Q. Was it for his services in attending to the cutting of the granite that he received this sum of nearly $100,000?

364 A. I refer to the copartnership articles for that.

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Q. Did he give any personal attention to the matter?

A. Yes, sir.

Q. Was he a pension agent at the time?

A. Yes, sir.

Q. At Richmond?

A. Yes, sir.

Q. Was it for his services in attending to the cutting of the granite that he received this sum of nearly $100,000?

364 A. I refer to the copartnership articles for that.

Q. Is the answer to be found in those articles?
A. All that I will give.
Q. Was this sum of nearly $100,000 intended for Mr. Washburne himself, or was he to divide with others?
A. As far as my own knowledge goes it was for himself.
Q. What is you belief?
A. I have none.
Q. Have you no information at all on the subject?
A. No, sir.
Q. And no belief?
A. No, sir.
Q. When did he receive his money, between what dates?
A. He received it as long as the contract for the south wing existed.
Q. He commenced receiving it when?
A. When the first payment was made by the government.
365 Q. Is this sum of $94,000 included in this statement of disbursements in your answer?
A. No, sir.
Q. Did I understand you to say just now that Mr. Andrews subsequently purchased Mr. Washburne's interest in this contract?
A. He purchased his interest in the copartnership between myself and Mr. Washburne.
Q. What did he pay him for it?
A. I do not know what he paid him, except in round numbers. He paid him about $50,000.
Q. When Mr. Washburne's total receipts on this account were about $134,000?
A. Not at all. The total receipts for that copartnership with Mr. Washburne were $94,000, received by Mr. Washburne or his assignee, Mr. Andrews. The total receipts from that copartnership.
Q. What proportion of the amount was paid to Mr. Washburne, and what proportion to Mr. Andrews?
366 A. I do not know. He drew the money. I did not draw the money.
Q. You state in your answer this sum of $94,000 was paid to Mr. Washburne?
A. Mr. Washburne assigned it to Mr. Andrews. When I say $94,000 was received by Mr. Washburne, I mean Mr. Washburne, under his copartnership with me, received that. What amount he received, and what his assignee received, I do not know.
Q. How do you know his assignee received any of it?
A. Because he purchased Mr. Washburne's interest in it.
Q. When?
A. I do not remember the date.
Q. About when?
A. I think it was some time in '72; I do not know what time.
Q. When you began to fill this contract in the first place, where did you obtain the granite?
A. In the quarry of the concern.
Q. Of what concern?
A. Andrews, Ordway & Green.
367 Q. What quarry was that?
A. The quarry that had been owned formerly by Green and Andrews.
Q. Had Mr. Washburne any interest in the quarry at that time?
A. None at all.

Q. Then the firm of Andrews, Ordway & Green at that time took the granite from the quarry in the rough and delivered it to Mr. Washburne to be cut and dressed, I understand you?

A. Yes, sir.

Q. And Mr. Washburne furnished men to cut and dress it?

A. Yes, sir.

Q. Under the contract, I understand the government paid all the expenses of cutting and dressing that stone?

A. Yes, sir.

Q. So that Mr. Washburne was at no expense on that account?

A. There are expenses attendant upon cutting it which the government doesn't pay for.

Q. What are they?

368 A. They pay such expenses as the superintendent certifies to.

Q. What are the expenses about cutting & dressing the stone that the government does not pay?

A. I do not know. About ten thousand a year.

Q. Give us the items; the nature of these outside expenses.

A. When stone come down from the quarry they are thrown off the car, and we have to have laborers for that. It has to be loaded on vessels and has to be handled in the yard.

Q. Those expenses, I understand, are included in this account you have rendered?

A. Certainly.

Q. They do not enter into the sum of $94,000?

A. No, sir.

Q. Was the granite cut and dressed at the quarry or near it?

A. No, sir.

Q. Not far from it?

A. About seven miles.

Q. Do your duties call you to the quarry or to the place where the granite was cut & dressed principally?

369 A. Between the two.

Q. At each place daily, generally?

A. No, sir.

Q. About how often were you at the quarry, at the place where the granite was cut and dressed?

A. I am in the one place or the other every day. I cannot tell you.

Q. When Washburne had charge of the cutting and dressing department, what department did you have charge of?

WITNESS. Do you mean what did I do?

Q. Yes, sir. That is what I mean.

A. I did whatever was necessary to take care of the business; to keep it running.

Q. What called you so frequently where the cutting and dressing of the granite was going on?

A. I was always there every day.

Q. What called you there?

A. To attend to my business?

Q. What was your business there?

A. It was my business to see that my contract was filled.

370 Q. The business, then, was to see that the cutting and dressing was properly done.

A. Yes, sir; and to go to the quarry to see that the stone was properly quarried.

Q. Had Mr. Washburne had any experience previous to this in the business of cutting granite?

A. No, sir.

Q. Was he at the place where the granite was cut and dressed as often as you were?

A. I do not know that he was; not as often as I was.

Q. His duties as pension agent engrossed a considerable part of his time, didn't they?

A. Yes, sir.

Q. Who hired the men to do this cutting and dressing during Washburne's reign?

A. Mr. Washburne.

Q. Did he do it personally or by an assistant.

A. Generally personally.

Q. How many men did he employ?

A. I suppose four hundred or five hundred on the work then.

Q. Did he have any assistance about this work?

371 A. No, sir.

Q. None at all?

A. No, sir.

Q. Was there any superintendent or foreman at the place where the cutting was done?

A. 8 or 10 foremen.

Q. Was there any general superintendent?

A. There was one head foreman and ten foremen. Every gang has a foreman.

Q. Who was head foreman during this time?

A. William H. Johnson.

Q. Is he there now?

A. Yes, sir. He has always been our head foreman.

Q. He had had experience in this business, I presume.

A. Yes, sir.

Q. Did he have anything to do with employing the hands?

A. None, except stone-cutters; authorized to put on stone-cutters as they came along.

Q. What hands were employed besides stone-cutters?

A. Blacksmiths, laborers, carpenters, boxers, drillers, pattern-makers.

372 Q. How many stone cutters were employed?

A. I reckon about four hundred.

Q. How many laborers of other classes?

A. About 100.

Q. Can you give us the names of some of the other foremen who were at the shops during the time that Washburne was deriving his profits?

A. The foremen were all the time changing. I would discharge and hire them.

Q. Are there any there now who were there during Washburne's time?

A. I think it is likely that some of the foremen have been there all the time.

Q. What are their names?

A. I cannot say which ones have been there all the time. I am not bothered much about the men.

Q. Were you in the habit of giving Johnson directions about the cutting and dressing of the material?

A. Certainly. I was the contractor; of course, I gave everybody directions.

373 Q. It has been your habit to give Mr. Johnson directions ever since he has been there?

A. Certainly. I employed him.

Q. You employed him?

A. Certainly. I employed him ever since we began the work.

Q. Do you pay him?

A. Yes, sir; certainly I do.

Q. Did you select him as foreman?

A. Yes, sir; and I was a long time getting him, too.

Q. Did you select the other foremen?

A. No, sir.

Q. Who did?

A. Mr. Washburne.

Q. How did it happen you selected the principal foreman, as you say you did, there?

A. Because he did not know where to find a proper man, and I did, and I recommended him to him.

Q. Not only recommended him but you employed him?

374 A. Certainly; he did not know where to select a man; he had to depend upon me for that.

Q. How was Washburne able to select the other foremen, because he had no experience in the business himself?

A. He depended on his head, and I suppose on recommendations. I had nothing in the world to do with the hiring of the men at all as long as Mr. Washburne was there.

Q. Who paid these men?

A. The government.

Q. By a government disbursing officer?

A. No, indeed.

Q. By whom?

A. Mr. Washburne got the money for them in Washington on his vouchers. He came to Washington and drew his money from the government.

Q. Did Mr. Andrews, after purchasing Mr. Washburne's interest in the cutting and dressing business, continue to own it individually besides having his interest as a member of the firm?

A. Yes, sir.

375 Q. How long did that state of things continue?

A. Until that copartnership ended.

Q. Until the company was formed?

A. That contract ended before the company was formed. No, it did not. It ended about the same time.

Q. How long have you known Mr. Washburne?

A. About 8 years.

Q. Were you intimately acquainted with him during that time?

A. Yes, sir.

Q. And you both lived in Richmond during that period?

A. Yes, sir.

Q. Was he a neighbor of yours?

A. No, sir.

Q. Did he go to Richmond eight years ago as pension agent?

A. I do not know whether he was a pension agent when he first went there, or not.

Q. Where did he live before he went to Richmond?

A. In Massachusetts, I think.
Q. Where in Massachusetts?
A. I do not know.
376 Q. Did you formerly reside in Massachusetts?
A. Yes, sir.
Q. When did you first go to Richmond?
A. When it was vacated, on the first day of April, or whatever day it was.
Q. And have you been there ever since?
A. Yes, sir.
Q. How long after you went there did Mr. Washburne come there?
A. I do not remember. I cannot say the exact time Mr. Washburne came to Richmond.
Q. How did you make his acquaintance, and when?
A. I was introduced to him a short time after he was there.
Q. Did you ever have any business relations with him before you had the relation with him about this contract which you have partly disclosed?
A. Yes, sir; a great many.
Q. What kind of business were you in together?
377 A. We were stockholders in a company together, and directors.
Q. What company?
A. Buckeye Slate Company.
Q. Were you both officers of the company?
A. Yes, sir.
Q. How long did that relation continue?
A. As long as the company lasted.
Q. How long did it last?
A. Three or four years; I forget which.
Q. When did it cease?
A. I think it was in 1870. I am not certain.
Q. Then it ceased a few months before you entered into this contract, or took the initiatory steps towards entering into it?
A. Some time before that.
Q. How long before?
A. Oh, I suppose 8 or 10 months, probably.
378 Q. Did you have any business relations with Washburne in meantime?
WITNESS. After I left the Slate Company?
COUNSEL. Yes.
A. I do not remember any, unless ordinary transactions; every day transactions; no particular transactions.
Q. Had you had any business relations with him before you went into the Slate Company?
A. I do not remember of any.
Q. I understood you to say a moment ago that you had had a number of business relations with him?
A. During that time, I suppose we had had a great many business transactions.
Q. Were they transactions in which you bore the relation of partners, or co-operators together?
A. Only in the Slate Company.
Q. What was the nature of the other transactions, then?
A. There were no particular transactions of any kind occurred. I suppose I borrowed money of him sometimes. He borrowed money of

me sometimes, also. I do not think he often borrowed of me, be-
379 cause he always had plenty.

Q. And I suppose you did?

A. Yes, sir.

Q. You are not certain about that?

A. I could not swear to a particular time. I know very often if I wanted a hundred dollars or three hundred dollars, and I didn't know anybody else to borrow it of, I would borrow it of him. He was a man I met every day. There were no particular transactions; no copartnership, nor any transaction of any business.

Q. Who were the other officers of this Slate Company?

A. General Mulford was the president of it.

Q. What office did you hold?

A. Secretary.

Q. What office did Mr. Washburne hold?

A. Director.

Q. Were there any other officers besides president and secretary?

A. A board of five directors.

Q. Who were the other directors of that company?

A. General Blunt was one, and Mulford, Washburne, and my-
380 self. There was one other, I do not remember who he was.

Q. When you made Mr. Washburne's acquaintance was he a man of wealth?

A. I considered him as very well off.

Q. Upon what facts did you base that estimate of his pecuniary position?

A. Simply formed that opinion. That is all.

Q. Don't you know why you formed it?

A. Because he always had plenty of money.

Q. How did you discover he had plenty of money?

A. Well, he subscribed to the stock for that Slate Company, that is one thing.

Q. How much did he subscribe?

A. I do not remember how much stock he held.

Q. How much of what he subscribed did he pay in?

A. All of it.

Q. You have no recollection as to the amount?

A. Not the slightest.

Q. How much did you put in that company yourself?

A. Five thousand dollars.

381 Q. How did the amount that Washburne put in compare with what you put in?

A. I have already said I do not know how much he put in.

Q. You do not remember whether it was more or less than you put in?

A. No, sir.

Q. Still from what he put in you charge he was a wealthy man?

A. Not from that alone.

Q. Well, what else?

A. I could not say. I formed an opinion on the same as any intelligent man would form an opinion.

Q. Where does Mr. Washburne live now?

A. In Richmond.

Q. Why did he retire from this lucrative business?

WITNESS. What business?

COUNSEL. This business of cutting and dressing granite.

A. Because he was bought out.

Q. Would not you regard it as a strange thing for a man to sell out a business for fifty thousand dollars from which he was realizing ninety-four thousand dollars a year.

382 A. You must state the facts. He was not receiving ninety-four thousand dollars a year.

Q. I have understood you to say that he got ninety-four thousand dollars a year?

A. Out of that copartnership. The copartnership lasted a little over two years.

Q. But the work was commenced out of the contract, when, in what month and year?

A. January, '72.

Q. And when did he sell out?

A. I think it was in the summer of '72; somewheres about that time.

Q. How much had he realized at the time he sold out?

A. I do not know how much at that particular time.

Q. Can you ascertain?

A. No, sir.

Q. Where did you ascertain and how that he had received ninety-four thousand dollars altogether?

A. That is his share of fifteen per cent.

383 Q. Cannot you find out what was his share of fifteen per cent. up to the time he sold out?

A. I do not know what he did with it.

Q. At the time he sold out he had been receiving the whole of the fifteen per cent., had he not?

A. Not the whole of it; he had expenses.

Q. He had received it all?

A. He had received his share, whatever it was.

Q. What was his share of the fifteen per cent.?

WITNESS. Nine per cent.

Q. Who received the other six per cent.?

A. The firm received the other six per cent.

Q. The firm of Andrews, Ordway & Green?

A. Yes, sir. You will find that amount returned as having been received by them.

Q. You put in the contract, the company put in the quarry, and together you received six of this fifteen per cent., and Washburne, for what he put in, received one-half more than both of you together?

A. Yes, sir.

Q. When did you make the acquaintance of Mr. Andrews; how long have you known him?

384 A. Five or six years.

Q. Where does he reside?

A. In Baltimore.

Q. What is his business?

A. He is treasurer of the Westham Granite Company.

Q. Has he any other business?

A. No, sir.

Q. What was his business when he became connected with the company?

A. He owned half of this quarry and was in the granite business.

Q. Was he not engaged in quarrying granite at that time?

A. Yes, sir.

Q. Where did Mr. Green live, and how long have you known him?

A. He lives at the quarry; I have known him a long while—five or six years.

Q. Is the Slate Company to which you have referred the company known as the Ordway Slate Company?

A. No, sir.

Q. Who compose the Ordway Slate Company?

A. Edward & Henry, and George F. and Albert Ordway.

385 Q. Was that firm in existence in 1871?

A. I do not remember.

Q. Was it in existence at the time you got the notes of which copies are made exhibits to the bill of complaint in this case?

A. Yes, sir.

Q. Did you sign the name of the Ordway Slate Company to these notes?

A. Yes, sir.

Q. Had you authority so to do from the company?

A. I had general authority to sign as their agent. The only person who had authority to sign the name of that company.

Q. Was your authority in writing?

A. To act as their agent?

Q. To act as their agent in this matter?

A. I never had any particular authority in that particular matter.

Q. What was the business of the Ordway Slate Company?

A. Buying and selling roofing slate.

Q. What is the relationship between Edward & Henry and yourself?

A. They are my second or third cousins. I do not know

386 which.

Q. These notes appear to have been made in Boston. Were they, in fact, made there?

A. I could not tell unless I saw the notes, whether they are in my handwriting or not.

Q. Here are the notes. Please look at them (handing the witness the notes).

A. They are in George F. Ordway's handwriting.

Q. Where were you when you signed them?

A. I was in Richmond.

Q. Where were your cousins Edward & Henry at that time?

A. I suppose they were at home.

Q. Did you advise them of this transaction with Mr. Shedd?

A. No, sir.

Q. You signed the name of the firm of which they were members to obligations amounting to about forty thousand dollars, and did not advise them of the fact?

A. That is what I just said.

Q. Did you never advise them of it?

A. No, sir.

Q. Why didn't you?

387 A. I suppose George F. Ordway did it.

Q. Were you on friendly terms with Edward & Henry at that time?

A. Yes, sir.

Q. Did you have any correspondence with them about that time?

A. I suppose so. I was constantly corresponding with them.

Q. You are quite certain, in your correspondence with them, you did

not mention the fact of having signed these notes in the name of the Ordway Slate Company?

A. Yes, sir.

Q. Have you your correspondence with them at that time now?

A. No, sir.

Q. Have you the correspondence which you held with George F. Ordway at that time?

A. No, sir.

Q. I see these notes are signed also, Albert Ordway & Co.?

A. Yes, sir.

Q. Was that done by you?

A. Yes, sir.

Q. Who were the members of the firm of Albert Ordway & Co.?

A. I think, myself and George F. Ordway at that time.

388 Q. I see they are also signed "Ordway & Co." Who were members of that firm?

A. I do not know. That was a Boston firm.

Q. Were you a member of it?

A. No, sir.

Q. Who is J. M. Ordway, whose signature appears to be here also?

A. The wife of George F. Ordway.

Q. When did you become acquainted with J. Condit Smith?

A. In the fall of '73.

Q. What agreement did you make with him on your own account and on account of the firm of Andrews, Ordway & Green?

A. Borrowed some money of him.

Q. How much?

A. Sixty thousand dollars, I think it was.

Q. What was his business at that time?

A. He had none. He was a capitalist.

Q. How happened you to go to him for money?

A. Because I knew he had it. There was a little panic and we were very much behindhand. He had lost a great deal of money, and

389 it was necessary for us to borrow a sum of money to carry on the business.

Q. Who referred you to him?

A. I was not referred to him at all. I met him here, and was introduced to him.

Q. What arrangement did you enter into with him at that time?

A. I borrowed $60,000 of him.

Q. Was that all there was of the arrangement?

A. Promise to pay him so much until it was paid up. We were to have two or three years in which to pay it up.

Q. Was that agreement made in writing?

A. He took my obligations in writing at the time for the amount.

Q. Your personal obligation?

A. Yes, sir; and the firm obligations.

Q. Took both?

A. Yes, sir.

Q. In what form were those obligations; in the form of notes?

A. In the form of acceptances, I think, drawn by me on the

390 firm and accepted by the firm. I think that is the way.

Q. Did you give him any security for the payment of these obligations?

A. Yes, sir.

Q. What was it?

A. I gave him an order on the disbursing agent of the State Department to draw the money.

Q. Did you draw all the money payable under the contract?

A. Yes, sir.

Q. When was this order made?

A. When I got the loan from him.

Q. When was that?

A. In the fall of 1873.

Q. Was it in the nature of a power of attorney?

A. No, sir.

Q. Did you enter into a written agreement with him to return this money in instalments?

A. Yes, sir.

Q. Have you a copy of that agreement, or can you obtain one?

A. No, sir. I do not think I can unless he has one; I have not.

391 Q. Have you a copy of the order you gave him on the disbursing clerk?

A. No, sir; that is on file in the State Department, I suppose.

Q. Under this order, did he draw all the money that was payable on account of this contract?

A. I do not know whether he did or not; it was very soon after that the company was formed; merely a month or two.

Q. The company, I understand, was not formed until March, 1874?

A. February, 1874, it was formed.

Q. What did he do with this money when he drew it?

A. I do not think he drew more than one month. It all went to the hands. He didn't reserve any of it at that time, because we were so hard pushed. It was for a month or two.

Q. I understood you to say a little while ago that you now owe him about $25,000?

A. I think it is $25,000 or $30,000.

Q. He has been paid, then, about $30,000?

392 A. Oh, no. The firm of Andrews, Ordway & Green borrowed $60,000 of J. Condit Smith, and they paid him when the company was formed; and he advanced $25,000 in money, which the Westham Granite Company have.

Q. How was he settled with for his $60,000?

A. He was paid.

Q. How?

A. In money.

Q. When?

A. When the company itself was formed.

Q. Where did you obtain the money to pay him?

A. From the sale of stock to him.

Q. Then he was paid really in stock, and not in money?

A. He gave the money for stock, and we paid him back.

Q. How much stock has he?

A. He has about hundred shares, I think.

Q. How much did he give of each share?

A. One hundred dollars a share—dollar for dollar.

393 Q. Then he paid in, as I understand, about $80,000, and immediately took back the $60,000, the sum that was due him?

A. He advanced us $60,000, and he subsequently loaned us $15,000 more, which was $75,000, and he was paid the whole amount of $75,000, and then he bought of the company $4,500 or $4,700 worth of stock.

Q. The whole of his debt was paid in stock?

A. Yes, sir. Its par value.

Q. And the amount of the stock he took was just the amount requisite to pay his debt?

A. Yes; then he bought of the company $4,500 worth of stock.

Q. He got the stock at its par value?

A. Yes, sir.

Q. Has he since loaned the company $20,000 additional?

A. Yes, sir; more than that—$25,000—somewhere between $25,000 and $30,000.

Q. What security has he taken for that?

A. No security except the company itself.

394 Q. Is the order or power of attorney which you gave him still in force?

A. He has now a power of attorney. When the company was formed I gave him a power of attorney as the president of the company to draw the money for the company.

Q. He is now authorized by virtue of that instrument to draw the money?

A. Yes, sir.

Q. Then why did you come here the last time to draw it yourself?

A. Simply because I always came. I came to settle his accounts. His instructions to the disbursing officer was, when he was not here for me to draw it so that the men might be paid.

Q. Does not the government require your receipt for each payment?

A. Either mine or his. He told them to give me the money and my receipt would be good. He could use his power of attorney if he chose.

395 Q. When did you first communicate to Mr. Smith, or to any other member or officer of the company, the fact of the agreement with Mr. Shedd upon which this suit was founded?

A. Didn't communicate it to him at all until after suit was brought.

Q. How soon after suit was brought did you inform him of it?

A. I reckon it must have been a month or six weeks.

Q. Did you employ counsel in the meantime?

A. Yes, sir.

Q. And endeavored to have the restraining order vacated?

A. Yes, sir.

Q. Have you directly or indirectly received any money or checks from the government on account of this contract since the day of the injunction or restraining order was served on you?

A. No, sir.

396 Q. And has the Westham Granite Company done so?

A. Not that I know of.

Q. Have you authorized any body to draw money for you since that time?

A. I cannot—never.

Q. Do you say you cannot?

A. No, sir; I cannot authorize anybody. There is an existing power of attorney. The money don't belong to me.

Q. Mr. Pickering informed me yesterday that the Westham Granite Company made a profit on the Centennial building contract of some $15,000 or $20,000. Is that true?

A. I do not know anything about it.

Q. Is it true that that profit was made?

A. I say I do not know; he keeps the books. We lost at the same time about $20,000 on a government job during the last year?

Q. How is it that you know the losses on one contract and don't know the profits on the other side?

397 A. Because I have charge of the government work, and know what is done and what is received.

Q. You do not look at the books of the company in reference to any matters, except in reference to government contracts?

A. No, sir; I did not look at them before that.

Q. Did you take any interest in ascertaining whether any profits were made on that contract?

A. Yes, sir; I always asked about it.

Q. Have you been informed that these profits were made on this contract?

A. I have been informed that the company was about $15,000 or $25,000 behindhand on the year's work, and the probability was that the Centennial contract would pretty nearly make it up.

Q. So that you would come out about even about it?

A. Yes, sir; that is what Mr. Pickering told me.

398 Q. Then you have heard in substance that the profits on the Centennial buildings were about $15,000?

A. I heard him say that he expected it would be about that; he had not closed it up; he expected that profit on that contract would about make up the losses on the other during the year, so that the company would be about even.

Q. Have you taken any interest in ascertaining whether any profit was made on the Western Union Telegraph Company contract?

A. That is an old contract long time ago; by the old firm.

Q. How much did you make on that contract?

A. It is imposible to say. It was kept in with the general run of the business.

Q. You have no idea whether you made money or lost money on that contract?

399 A. No, sir.

Q. Not the remotest?

A. No, sir; it all went into the general receipts and disbursements; could not separate it.

Q. You say that the company's accounts with reference to the State Department contract and the Western Union building contract were not kept separate?

A. No, sir; cannot keep them separate. It is impossible to keep them separate. If you have got two hundred men in a quarry, quarrying stone, some for the government and some for the Western Union, and some is rubble stone, you cannot tell which is which.

Q. Were not the accounts of the Centennial building contract kept in the same way with the Western Union building?

A. I do not know how Mr. Pickering keeps his accounts.

Q. You do not know whether the two accounts were kept in the

400 same way or not?

A. He assumes the value for the stone; simply assumption.

Q. Did you have anything to do with the making the bid for the Western Union job?

A. Yes, sir.

Q. What amount did you compute would be your profits on the contract in case you obtained it?

A. I thought we would make about $15,000 on it.

Q. You have never taken interest enough in the matter to verify the account afterwards?

A. There was no way to do it.

Q. Have you any reason to suppose you did not make any profit?

A. I am very well satisfied we made no money out of it.

Q. How satisfied of that?

A. We had to buy a great deal of stone outside which we did
401 not count on doing, being pushed by the government, and being very hard pushed for money and very much behindhand.

Q. You made no allowance for contingencies when you made your bid?

A. No, sir. In making bids we always make allowances for contingencies. All I know is in the total amount of our business we were behindhand $150,000. Even if we had made over $75,000 it would not have made any difference.

Q. When did you make that discovery?

A. No particular time of discovering it. When the accounts were closed the amount disclosed.

Q. When did you close your account and find you were $140,000 behindhand?

A. When the concern was ended. When it first went into the company.

Q. Still the same persons who had been in the firm went into the company?

A. Certainly.

402 Q. They were anxious to lose some more money, I suppose?

A. I do not know about that; I have already explained to you that we did not get the profits on the other job. I suppose if we could get the legitimate profits we would make money.

Q. You refuse to say why you did not get your legitimate profits, instead of paying to another man?

A. I have not said so.

Q. Will you state now why?

A. It was a copartnership arrangement between myself and Mr. Washburne and he received a certain portion of them.

Q. What had he done to entitle him to receive it?

A. He had received my agreement to that effect.

Q. What was the consideration of your agreement?

A. I have already declined answering that.

403 Q. I asked you a little while ago how it happened that you had paid out over $362,000 for labor alone, when your total receipts for granite furnished were about $20,000 less than that sum. Your explanation of it was that you had paid Washburne $94,000?

A. That was not my explanation.

Q. As I understood you.

A. If you will look through you will see.

Q. That is not an answer at all.

A. The reason was because we spent more money than we received. In other words, it cost more money to quarry granite than we received for it.

Q. You include in this labor account the amount paid to laborers for stripping the granite, and then for quarrying it, of course. Do you include any other class of laborers; and, if so, what?

A. I include all of our laboring force, of all kinds and descriptions.

Q. Please classify them for us?

404 A. Laborers, quarrymen, mule drivers, boatmen, blacksmiths,

engineers, stone-cutters, boxers, drillers, lewis's, tool-boys, pattern-makers, carpenters, tool-grinders.

Q. Is that all?

A. I cannot think of any more just now.

Q. Have you included in this list the men who are employed in cutting and dressing the stone?

A. Yes, sir; the stone-cutters.

Q. Are they not paid by the government?

A. If they are working on government work they are.

Q. Is the're pay included in this sum of $362,000?

A. Not at all. That is entirely a separate item.

Q. Now, I wish you would be kind enough to make a new enumeration to include in it only those class' of persons whose work is paid by the company, and not by the government.

A. It would be the same thing, only a repetition of it; for
405 building for the Centennial or building for the government takes the same class of men.

Q. How soon after this contract was obtained did you commence work at the quarry?

A. About two months.

Q. How many months in the year did you work?

A. As many as the government will let us.

Q. How many have you in fact worked?

A. We work every month in the year when the work is going on.

Q. How many months in the year has the work been going on, every year since you commenced work?

A. I do not know that I can tell; I think the first interruption was in January of 1874.

Q. Worked uninterruptedly until January, 1874?

A. Yes, sir; for two years uninterruptedly.

Q. Then interrupted how long?

A. From January until August.

406 Q. Then worked how long?

A. Until the 15th of January; part of the time on full time, and a part on half.

Q. Did you have a full force on during the entire year, when you worked uninterruptedly?

A. The force varied.

Q. What was the average number of men employed who were payed by the company and not by the government?

WITNESS. On what work; on government work?

COUNSEL. All together?

A. I should think probably we employed at that time four or five hundred men part of the time.

Q. What was the average number you employed during the entire two years?

A. I could not answer that question without making an average.

Q. You employed these men and saw them at work?

407 A. It was according to the work we had to do; if we had a contract with the Western Union, of course we put a large force on.

Q. Did you suspend work at the quarry from January, '74, until August, '74?

A. No, sir.

Q. What were you doing?

A. Stripping and getting ready for the work.

Q Did you suspend work from 15th of January last until the present time?

WITNESS. In the beginning?

COUNSEL. Yes.

A. No, sir.

Q. What had you been doing there?

A. The same thing, keeping the quarries in shape and in order; a heavy expense all the time.

Q. Have you also had men engaged in stripping the granite?

A. Yes, sir.

Q. From the 15th of January to the present time?

408 A. Yes, sir; always doing that. The quarry never stopped stripping.

Q. Then you must have, at the present time, a large quantity of stripping done for future work?

A. We have a little. I do not think we have got a very large amount.

Q. Mr. Pickering informed me yesterday that you had as much granite stripped as you could expect to work in a year.

A. He has been to the quarry. I have not been to the quarry for a long time. I do not know.

Q. Do you know how much of this three hundred & sixty-two thousand dollars has been paid to laborers for stripping granite for the coming work?

A. No, sir; it would be impossible to tell.

Q. Then you do not know?

A. No, sir.

Q. Can you approximate it?

A. I say that it would be impossible to tell.

Q. Impossible to approximate?

409 A. Yes, sir. Maybe using to-day stone that was prepared five years ago; and maybe doing work to-day that would not come in use for five years.

Q. What number of shares of Westham Granite Co. do you claim, or to be allotted to you by Mr. Johnson?

A. I claim that I ought to have one-third of it, after I pay what is due on it.

Q. Have you pledged, or hypothecated, or made an agreement so to do, the shares which you expect to receive?

A. Yes, sir; a portion of them.

Q. What proportion of them?

A. Three hundred shares. I think I won't get any.

Q. Why?

A. I think if there is a share coming to me, it will take the whole of it to pay my share of the debt.

Q. How long have you been of that opinion?

A. For the last six months.

410 Q. When did you make this agreement to hypothecate the three hundred shares?

A. I made one or two about a year ago—a little over a year ago.

Q. When did you make the others?

A. The other a short time afterwards—both of them about a year ago, and when I borrowed money on them.

Q. From whom did you borrow this money?

A. I borrowed some from J. Condit Smith and some from Bradley T. Johnson.

Q. It is a year ago or more since you made these agreements to hypothecate your shares when you obtained them?
A. Yes, sir.

Counsel for the complainant requests the examiner to adjourn the commission until Thursday, the third day of June, at 11 o'clock a. m., and requests the witness to appear at that time for further examination.

He further requests the witness to bring with him articles of co-
411 partnership between himself and the other members of the firm of Andrews, Ordway & Green, copy of the agreement with Washburne, referred to in his testimony, and the cash-books, journals, and ledgers of that firm and of the Westham Granite Co.

Thereupon the commission adjourned until Thursday morning next, June 3d, at the same hour (11 o'clock a. m.) and place.

JAS. O. CLEPHANE,
Examiner in Chancery.

412 WASHINGTON, D. C, *June 3d*, 1875.

Commission met pursuant to adjournment at the office of Stanton & Worthington, 637 F st., in this city, at 11 o'clock a. m. Present, A. S. Worthington, esq., counsel for the complainant.

After waiting for more than half an hour, the defendant, Ordway, not appearing, at the request of Mr. Worthington the commission adjourned to meet at the same place at 11 o'clock a. m. on Saturday, 5th of June, 1875.

JAS. O. CLEPHANE,
Examiner in Chancery.

413 WASHINGTON, D. C., *June 5th*, 1875.

Commission met pursuant to adjournment at the law office Messrs. Stanton & Worthington, 637 F st., at 11 o'clock a. m. Present A. S. Worthington, esq., counsel for the complainant.

Neither the defendant, Ordway, whose examination as a witness was to be resumed at this session, or his counsel being present, an adjournment was had until Wednesday morning, June 9th, at 11 a. m., at the same place.

JAS. O. CLEPHANE,
Examiner in Chancery.

414 WASHINGTON, D. C., *June 9th*, 1875.

Commission met pursuant to adjournment. Present, A. S. Worthington, esq., counsel for the complainant. Owing to the absence of the witness Ordway, adjourned to meet on Thursday, June 10th, 1875, at 11 a. m.

JAS. O. CLEPHANE,
Examiner in Chancery.

415 WASHINGTON, D. C., *June 10th*, 1875.

Commission met pursuant to adjournment. Present, A. S. Worthington, esq., counsel for the complainant, and Mr. Morris, of counsel for defendant.

After waiting upwards of an hour for the appearance of the witness Ordway, whose examination was to be resumed at this session of the commission, adjourned to meet on Friday, June 11th, at one o'clock p. m., at the same place.

Examiner in Chancery.

WASHINGTON, D. C., *June 11th*, 1875.

Commission met pursuant to adjournment. Present, A. S. Worthington, esq., of counsel for the complainant.

416 Examination of the witness, Albert Ordway, was resumed as follows:

By Mr. WORTHINGTON:

Q. Have you produced the books & papers mentioned in the subpœna served upon you on the 29th of May?

A. Only one of them; a copy of the copartnership between Andrews, Ordway & Green (handing paper to counsel).

Q. Why have you not produced the others?

A. The copartnership between Mr. Washburne and myself, I find I have not a copy of. There were two copies, one of which was filed in the State Department, and the other copy Mr. Washburne has.

417 He has left Richmond and I could not obtain it. If it is necessary to obtain that, I can get, I suppose, a copy from the State Department record.

Q. Where does Mr. Washburne reside now?

A. He has no permanent place of residence. He has left Richmond and gone to Massachusetts, and is going from there to California.

Q. When did he leave Richmond?

A. I do not know what day it was; a week or ten days ago.

Q. Do you know where he intends to stop in Massachusetts?

A. He told me he would be at Walpole a little while.

Q. Is he going to California to remain permanently?

418 A. I think not; just on a trip, I should judge, from what he said. I had but a short conversation with him.

Q. Why have you not produced the books called for in the subpœna?

A. Because they were not in my possession, and they refused to give them to me. They said I had given a sworn statement taken from the books of the receipts and disbursements, and they would not allow the books to go out of their hands.

Q. Who said that?

A. Both the company and the firm. You called for two sets of books.

Q. Who said it for the company?

A. Colonel R. Snowden Andrews, the treasurer of the company.

419 Q. Did anybody else say it?

A. No, sir; he is the only officer of the company there.

Q. Who said it for the corporation?

A. Colonel Andrews said it in the presence of Mr. Green, the other partner.

Q. What did Mr. Green say?

A. He said nothing.

Q. Did you express a desire to bring them?

A. Yes, sir.

Q. And you still desire to bring them?

A. Yes, sir; I have no objection in the world, as far as I am concerned.

Q. How is it that Mr. Andrews' vote counts more than yours?

A. I do not suppose his vote counts any more than mine. Do you mean in the firm?

420 Q. In the firm or in the corporation?

A. In the corporation it is not a question of a vote. He is the custodian of the books of the corporation.

Q. Who makes the entries in the books of the corporation?

A. I am not in the office, but my impression is when I am in there that the clerk makes the original entries, either the auditor or the clerk; I do not know which.

Q. Then how does Mr. Andrews, who is simply the treasurer, come to have control of the books?

A. They are the treasurer's books.

Q. Did Mr. Andrews give any reason for not wanting the books to be brought here?

421 A. The only reason I remember he stated was that this was a matter that concerned me alone, & they had nothing to do with it.

Q. Did I understand you to say that Mr. Andrews remarked that you had already made up a statement from the books for us?

A. Yes, sir.

Q. Did he know you were making up the statement when you were making it?

A. Yes, sir; I went to his room where the books of the firm were, and got his permission to have access to them, and took the statement off in his presence.

Q. He knew they were to be used in this suit of Mr. Shedd against yourself?

A. Yes, sir, certainly.

422 Q. Now, he declines to allow us to verify the statements from the books?

A. No, sir; I cannot say that he declines that. He declined to put the books into my possession to bring here. He simply made the remark that I had sworn to the statement, and that that was sufficient.

Q. The document which you have produced as a copy of the copartnership articles of Andrews, Ordway & Green is not signed by anybody. Were the original articles signed?

A. I do not remember how many copies were signed; whether more than one was signed; but there was a copy made. Each of us

423 had one, and this is the copy I had. The partnership articles were signed.

Q. Where is the copy that was signed?

A. That I do not know. I could not find it. I did not have access to the books of the firm, and this was in my own possession, and my copy. After a long search I found that. I can swear that is an exact copy of the articles that were signed.

Q. Where were they signed?

A. In Richmond, at the time of execution.

Q. Were they signed by all the partners at the same time?

A. Yes, sir; by the three members of the firm. I think they were signed in Bradley T. Johnson's office, but I would not swear as to exact location.

424 Q. Who drew the articles?

A. Bradley T. Johnson.

Q. Did Mr. Andrews reside in Richmond at that time?

A. I do not know that you could call his residence there. His family residence is in Baltimore, but he was there a large portion of his time, and had a room there, but he is not a voter there. I do not suppose he would come under the technical name of a "resident."

Q. At a hotel?

A. No, sir; at a private house.

Q. Did he have the room at the private house when these articles were executed or did he stop at a hotel?

A. He did not live at my house at that time. It was afterwards when he lived there.

425 Q. Where did he live at the time the articles were signed?

A. In Baltimore.

Q. What was his stopping place at Richmond when the articles were signed, if he had any?

A. I think he generally stops at the Exchange Hotel.

Q. Where did Mr. Green reside at the time these articles were executed?

A. He resided at the quarries.

Q. I propose to put this copy in evidence as an exhibit to your deposition.

A. Very well; I have no objection.

(Paper introduced in evidence, made a part hereof, and marked Exhibit R. G. S., No. 7.)

Q. Did these articles of copartnership express the entire agree-
426 ment between Andrews, Ordway & Green at the commence' of this business?

A. Yes, sir.

Q. How long did they remain the sole agreement between these parties?

A. For all time, until the end of the business, and still in force.

Q. You mean, I suppose, they are still in force, except in so far as they have been transferred to the Westham Granite Co.?

A. Yes, sir; I mean they are still governed by these articles of copartnership. Our copartnership business is not yet settled, and therefore the agreeements between us remain in force.

Q. Do you still own a one-third interest in that quarry?

A. It is utterly impossible for me to say whether I own that or any interest.

427 Q. Why?

A. That is the question that is now pending in the settlement of the copartnership business.

Q. Have you made any conveyance to anybody to complicate your title to it under that agreement?

A. I have hypothecated—if I have an interest I have hypothecated it. If there is any stock of the corporation coming to me I have given a conditional hypothecation of portions of it for the purpose of raising money for my living expenses.

Q. How much of it have you so hypothecated?

A. They were fully given in evidence on the first day, but I
428 will repeat them. I hypothecated to J. Condit Smith 100 shares of stock.

Q. For how much money?

A. For $5,000 of money. I hypothecated to Bradley T. Johnson 200 shares of stock for the loan of $10,000 of Virginia consol bonds.

Q. Worth at that time how much?

A. I am not certain what Virginia consols were worth at that time. They were probably worth about $5,200. I am not certain. They are now worth about $6,000.

Q. Has the obligation which you gave J. Condit Smith matured?

A. Yes, sir; some time ago.

Q. Is there any probability you will be able to pay these two obligations except by the use of the collateral which you have given?

429 A. No sir; I have not a dollar on the face of the earth.

Q. Then I understand you have parted entirely with your interest in this contract?

A. Well, I do not know that you can draw that inference from that. The question was whether I have any interest left to myself.

Q. If you had any you have parted with it, I understand you?

A. Not necessarily with the whole of it. I have parted with that much of it, if that much comes to me. On one side my partners claim that I have no interest whatever; that my interest has been obliterated. On my side I claimed an interest.

Q. Your interest, at all events, would be very small if anything over?

430 A. Very small, for the reason that the copartnership debts must be paid on that account, about $36,000, and of course I am holden for one-third of those partnership debts. The assets of the copartnership consist entirely of stocks of the Westham Granite Co. The only resource that I would have of paying my share of that $36,000 of the debt would be by the sale of those assets, and of course the stocks of that company after the condition the company has been in since its organization would probably not realize very much money. It probably would absorb all I have in it, if I have any in it, to pay my share of that debt.

431 Q. Then there is no probability that Mr. Shedd will realize anything of your share of your profits in this contract if he takes subject to the rights of those to whom you have pledged your share of your stocks which you expect to get?

A. I cannot say myself that either he or I am going to realize anything. He was to realize his debt under voluntary agreement on my part that I should give him three-eighths of any money that I made. I have not made any money, and therefore he has got none.

Q. And you are wholly insolvent?

A. Wholly insolvent; and I would like Mr. Shedd's counsel to understand that the agreement I gave to Mr. Shedd was voluntary

432 on my part, at my own suggestion, and a desire to serve him, which was recognized by him, and in the hope that I was going to make some money; and willingly and gladly would have given him three-eighths of what I made until his debt was paid. It is as much my misfortune as his that I have not made any. I never avoided my obligation or agreement to him in any manner, shape, or form.

Q. How long have you been insolvent?

A. That is a question very difficult for me to answer, for the simple reason that at one time I supposed my interest in this contract or

433 business would result well, and that therefore my interest in it was worth considerable money. If it had been worth that money I would not have been insolvent, and ; but at what particular time I became insolvent it is almost impossible for me to say. I certainly have been in that condition for the last two years.

Q. Were you insolvent when you secured this contract?

A. Before I secured the contract I was insolvent. At the moment of securing it I did not consider myself insolvent because I considered that contract as of value and worth something, and enough to make me solvent, and probably rich.

434 Q. By these articles of copartnership you were entitled to all the profits of the cutting of stone for the State Department, and

neither Andrews, Green, nor the firm of Andrews, Ordway and Green was to have any interest in such cutting of stone. What did the 15 per cent. of the cutting of stone for the State Department amount to?

A. I cannot give you the exact amount. It is in the first day's evidence. It is a little over one hundred and fifty thousand dollars.

Q. Of that sum, I understand you to say $94,000 was paid to Mr. Washburn for reasons which you decline to state; what was done with the remainder of the $150,000?

435 A. I can explain that best by giving the full history. The reason of the insertion of that clause in the copartnership between Andrews, Ordway & Green that the whole profit of the south wing came to me was that a previous copartnership between Mr. Washburne and myself existed under which he was to cut the stone of the south wing, and he received the full amount of it. When the copartnership was formed, the copartnership not recognizing Mr. Washburne, and dealing with me, inserted the clause that the whole cutting of the south wing came to me.

436 I never received any of that money individually or in any other way. Under the articles of copartnership with Mr. Washburne he had the power of attorney and drew all the money for cutting the stone of the south wing. That was subsequently modified, by which modification Mr. Washburne gave up a portion of that and modified the agreement, so that instead of his receiving the full 15 per cent. he was to receive 9 per cent. and I was to receive 6 per cent. On that modification I made an agreement with Andrews, Ordway & Green that that 6 per cent. which Mr. Washburne had given up to me did not belong to me, but went into the firm of Andrews, Ordway & Green—that is, stated

437 in the return of the receipts, as a portion of the receipts of Andrews, Ordway & Green. Mr. Washburne went on under that copartnership, I think, for about 6 months, and Col. Andrews then purchased of Mr. Washburn individually his interest of the copartnership with me, so that when I say Mr. Washburn received $94,000 I mean that $94,000 was derived by that copartnership. If you desire me to state why I decline to answer the question you put the other day, I have no hesitation in doing it.

Q. I do desire you to state.

A. I will simply say that it involves confidential matters that do not effect this case at all, as between Mr. Washburne and myself; and there

438 are people who are not interested in this case at all, whose names I am not at liberty to disclose. If I felt it had any bearing on this case, I should then decline to give those facts unless compelled to do so by the court. But I would say at the same time, under oath, that I personally never derived one dollar, directly or indirectly, from that matter.

I decline to give those things for the reason I state under oath that I myself never received any money, and I felt that was as far as Mr. Shedd's interests were concerned, in knowing what reasons led to the copartnership between myself and Mr. Washburne.

Q. Very well; we give you notice that if you decline to say why this

439 sum of $94,000 was paid to Mr. Washburne, we shall ask the court to treat it as profits received by you.

A. I have taken oath that I received none of it.

Q. It appears now that these articles of copartnership do not contain the entire agreement between yourself and Andrews and Green, but that the contract between you was substantially modified by a new instrument, relative to this 6 per cent. of 15 per cent. of the profits;

have you, or can you obtain, the original agreement between yourself and Andrews & Green, in reference to this last matter?

A. The question that you asked me was whether these articles of copartnership contained all the agreements that were made between Andrews, Ordway and Green at the time of their execution. I
440 answered you that they did. There were no modifications of that agreement ever made, except as I stated, when Mr. Washburne gave up a portion of his agreement with me, that by a very short paper I assigned it to the firm. Whether a copy of that paper is in existence or not, I cannot say; but it was simply that 6 per cent., which, under that article of copartnership, would have come to me, I assigned to the firm, and it appears on a list or receipts of the firm, as having been received by it.

Q. Then 2 per cent. of the 15 per cent. only belonged to yourself?

A. It did not belong to me individually. It belonged to the firm, and if in the division of the matters of the firm profit had been shown, I would have had my share of it. I could not take 2 per cent.
441 of the money and put it in my pocket, because 2 per cent. were not profits. There were expenses attendant upon conducting the business.

Q. Where is the James River granite quarry?

A. About two miles and a half below Richmond, on the south bank of the James River.

Q. Above or below Richmond?

A. Below Richmond.

Q. Did you ever own that quarry, or have an interest in it?

A. I did, at one time.

Q. What was the extent of your interest, and when did you obtain it?

A. I cannot say when I obtained it—the date. The extent of my interest at that time, I think, was one-third of the property.

442 Q. About when did you obtain it?

A. The probability is it was the last part of 1870, but I am not certain.

Q. Who else was interested in the property?

A. A party named Dick and a party named Rothwell.

Q. Was it owned by a joint stock company?

A. Not originally.

Q. Subsequently?

A. Subsequently it was.

Q. When was the joint stock company formed?

A. I do not remember the date it was formed.

Q. About when?

A. I think perhaps it might have been formed in the winter of 1871. I would not say on oath that it was.

443 Q. When did you begin your effort to obtain the State Department contract?

A. In June, '71, or perhaps in May; as soon as it was advertised. I do not remember the exact date.

Q. Have you any means of fixing the dates of these transactions by books or letters or other memoranda?

A. I do not think I have. I have no papers relative to the James River Granite Co. at all.

Q. Have you any books?

A. No, sir; I have not any books relating to it whatever.

Q. You are unable to fix any dates about the matter?

A. The only possibility I know of getting at the dates of incorpora-

tion would be by reference to the records of the circuit court that
444 gave the corporation. It is a matter that has passed entirely out of my mind and recollection, except generally.

Q. I believe you first proposed to furnish the granite from the James River quarry?

A. Yes, sir.

Q. Did you in fact furnish any of the granite from that quarry?

A. No, sir; the Supervising Architect said it would not answer.

Q. Then why was it included in the contract?

A. I do not know of any reason why it should have been.

Q. It was never used or worked or anything done with it?

A. I suppose probably to cover my bid it named it.

Q. How long before the contract was signed did he decide that
445 the James River quarry would not answer?

A. He decided before awarding the contract at all.

Q. How long was the contract awarded before it was signed?

A. Probably a month at least.

Q. How long before it was awarded did he decide not to take the James River Quarry granite?

A. When he visited Richmond to examine the quarries, which was probably a week before the official award was made.

Q. And about a month after that the contract was signed?

A. The first contract was signed. The contract now in existence at a subsequent date, an error having been discovered in the first one, it was made over & the contract as it stands is dated the 16th of
446 Nov. But the contract as first signed was dated the 16th of August.

Q. What was the error?

A. Some slight clerical error. It didn't amount to anything.

Q. Were you working the James River Quarry in the spring or summer of 1871?

A. Yes, sir.

Q. To any considerable extent?

A. No, sir; merely attending to developing it to see whether there was a quarry there.

Q. You found there was none?

A. We were very much disappointed in finding there was no quarry there that had any value.

Q. That is all you did with it?

A. Yes, sir.

Q. At what time in 1871 did you find it was valueless?

A. I cannot state that I came to any conclusion of that kind
447 at any particular moment. The first and strongest indication I had of it was Mr. Mullett's judgment on it.

Q. At the time you were developing the James River Quarry, who was interested in it besides?

A. Mr. Dick and Mr. Rothwell.

Q. How much money did you put in that quarry?

A. I put one-third of eighty-two hundred and fifty dollars. The property cost eight thousand two hundred and fifty dollars, and I paid one-third of it.

Q. What was the condition of the granite quarry—the Westham Quarry—in the summer of '71, as to its being developed?

A. It had been worked over 30 years, and was considered the finest quarry in that section. Mr. Mullett told me if I could
448 arrange to furnish my stone from that quarry that he would ac-

cept it. I then entered into negotiations with the owners of it for that purpose.

Q. Were those negotiations partly written and partly verbal?

A. All the negotiations were verbal. The consummation of it——

Q. Is in the copartnership articles?

A. You will notice in the copartnership articles that at the time they were drawn I did not possess this contract, & they were drawn contingent upon my obtaining it.

Q. Was the Westham Quarry so fully developed at that time that Mr. Mullett was able to decide that it was satisfactory without spending any money in further developing it?

449 A. He decided that the quarry had the capacity, and had been proven and developed far enough to show its capacity to furnish this contract, but as fast as you work a quarry you have to spend money to develop it for further work.

Q. I understand that, but what I mean is, was any money spent in order to put the quarry in such a shape that Mr. Mullett would accept it; or did he decide it was satisfactory simply upon inspection of it as it stood?

A. He decided it was satisfactory from his inspection of it. No money was spent upon it until afterwards.

Q. Now, how much money was spent in developing the James River Quarry?

450 A. I do not know that I could say, but I should judge that there was at least $15,000 of money thrown away there.

Q. In addition to the $8,200 you speak of?

A. Which we paid for the property. We bought the property for $8,250, I should judge, in round numbers, and we probably wasted $15,000 there in trying to make a quarry.

Q. Was that spent along in the spring?

A. In the previous fall, and that winter and that spring, from the time we first purchased the property.

Q. None of Mr. Shedd's money was spent then in developing the James River quarry?

A. No, sir; and I might add to that answer, nor was any of it put into the Westham Company.

Q. What did you do with it?

451 A. I applied it to all kinds of uses. It didn't go into the granite business, because I did not put a dollar into the granite business in any manner, shape, or form, in the Westham quarry. I do not know that I could possibly say. I used it in all kinds of ways. I paid debts with it, and put some of it into the slate business, and devoted it to various other purposes, such as I wanted to use money for. I was in the slate business at the time, and I remember that quite a large sum of it I used in that way——

Q. In the Ordway Slate Company?

A. No, sir; simply in my own personal business as a commission merchant.

452 Q. Commission merchant dealing in slate?

A. Yes, sir; and cement.

Q. By a commission merchant I understand you to mean one who sells the goods of others for a commission?

A. Yes, sir.

Q. How did it happen you used any considerable amount of money in selling the goods of other people for a commission?

A. In making advances to them on their consignments.

Q. Then you got your money back when you sold the goods?

A. Sometimes I did, and sometimes I did not. We met with some losses.

Q. How much of Mr. Shedd's money did you lose in that way?

A. Practically, I have lost it all, because I have got none left.

453 Q. How much of it did you lose in this way?

A. It is not possible for me to say how much I lost in that particular way.

Q. Did you keep books in your slate business?

A. I kept a memorandum of—the consignment books.

Q. Where are those books?

A. When I got through business I sent them to the paper-mill.

Q. And they have been destroyed?

A. Yes, sir; long ago.

Q. There is no record evidence of what was done with Mr. Shedd's money, then?

A. No, sir, none in the world, except my own remembrance of it. There is no particular way in which it was used. I used it in any

454 manner, shape, or form that I saw proper, whenever I had occasion to use money. I shaved a great deal of paper with it, and lost a great deal in that way.

Q. You say you paid some debts?

A. No particular debts. I simply said that I probably paid debts with it, or used it in any way. I remember some particular losses. I remember some thirteen or fifteen thousand dollars that I lost by one man in buying paper.

Q. When was that?

A. It was about that time. I cannot fix the date.

Q. About what time?

A. After I received his money. In the course of a year after I received it.

Q. Did you keep a bank account at that time?

A. Yes, sir.

Q. In what bank?

455 A. I do not remember in what bank at that particular time. If the State Bank was formed at that time, I kept an account there. I had an account in the First National State Bank and the Planters' Bank, but what particular times I have had my accounts there I cannot say.

Q. In what bank did you have your accounts when you obtained this State Department contract?

A. I think it was in the State Bank.

Q. Are you not sure?

A. Not positive; not enough to swear to it without looking; but I am morally certain the State Bank was formed at that time, and I was a director in it.

Q. Have you preserved your bank books?

456 A. No, sir; I do not keep my bank books.

Q. You sent your accounts to the paper mill?

A. All the old books I had then I just bundled them up. I lost a great many books at the time of the flood. All my books up to the time of the flood, October, '71, were destroyed, and subsequent to that time, when I went into the granite business, they were closed up, and, as there was nothing further to be done with them, I put them in an old flour barrel as waste paper.

Q. Did you make the same disposition of your checks?

WITNESS. Bank checks?
COUNSEL. Yes.
A. Yes, sir; I never kept the old books.
457 Q. You took them from the bank and destroyed them?
A. If I had my bank books made up, and they had returned me my checks as vouchers, after my clerks had made the comparison of the books with the checks and ascertained they were all right, then they were destroyed.
Q. Are you in the habit of taking receipts for money where you do not pay by checks, or did you usually pay by checks?
A. It was always my custom to pay by checks.
Q. Was that your custom in '71?
A. Yes, sir.
Q. Then you have no receipts, no checks, no bank books, no account books to show your money transactions at that period?
WITNESS. Of my old business before I went into the Westham Granite Company?
458 COUNSEL. Yes.
A. No, sir; none whatever.
Q. How is with letters? Do you keep letters?
WITNESS. Letters received?
COUNSEL. Yes.
A. Not unless they are letters I consider of some importance. I file those away.
Q. Have you Mr. Shedd's letters of that period?
A. I probably have some of Mr. Shedd's letters now, but not the whole correspondence with him; but as for any letters from him that I consider of any importance I probably filed them away.
Q. Have you the letters received from your cousin, Geo. F. Ordway, in 1871?
A. No, sir; I looked for those after the last time I was here,
459 when you asked me, but I could not find any of them. I found some letters of Mr. Shedd's.
Q. Where are they?
A. In my desk at Richmond.
Q. Of what dates; of what year?
A. Most of the letters I found of Mr. Shedd's are letters I received from him at the time I gave him the agreement, thanking me for what I tried to do for him.
(At this point of the examination Mr. Morris, of counsel for defendant, entered the room and stated that he desired to reserve all rights of objection to the testimony on the ground of irregularity.
Counsel for Mr. Shedd inquires whether Mr. Morris has any
460 objection to his proceeding to further examine the witness now.
Mr. Morris replies: No, not with this examination; as far as the examination of to-day is concerned, I have no objection.)
Q. (By Mr. WORTHINGTON.) When was the work commenced on the government contract?
WITNESS. Originally?
COUNSEL. Yes.
A. In January, '72.
Q. Not for four months after the contract was made?
A. No, sir.
Q. What was the cause of the delay?
A. The Architect's Office did not furnish the plans until the time.

Q. Had Andrews and Green been carrying on business there on a large scale before this contract was obtained?

461 A. They had been carrying on a regular granite business. The scale it was carried on depended on the work they had.

Q. Were they prepared to do a great deal of work?

A. Yes, sir.

Q. Were any additional expenditures in the way of preparation for work rendered necessary by obtaining this contract?

A. Yes, sir; large amount.

Q. Please state what was the nature of this preparatory work.

A. The purchase of additional tools & machinery; the building of a railroad; purchase of property for cutting, sheds, and the erection of the sheds for cutting stone; purchase of steam-engine, and similar things.

Q. In this statement you include expenses which were paid by

462 the government, do you not?

A. No, sir; those expenses were incurred by ourselves.

Q. Does not the government, under the contract, pay for the sheds made necessary by the cutting of the granite?

A. All sheds necessary for over 100 stonecutters, with the necessary amount of shops for additional mechanics, are paid for by the government; but the shops and sheds necessary for 100 stonecutters, with the proper proportion of other mechanics, is paid for by ourselves.

Q. And during these four months of preparation, about how much money did the firm have to spend for carrying on the contract which was not to be reimbursed by the government?

463 A. I cannot say what amount of money was spent in those four months. The preparations didn't cease in those four months.

Q. How much money did it take to prepare that quarry for carrying on the government contract?

A. It is impossible to say, for the expenditures have not ceased yet.

Q. You cannot say anything about it?

A. Yes, I can say this: that it has cost the difference between what my exhibits show are the receipts and disbursements.

Q. An account of these expenditures, I presume, appears in the books down in Richmond that Mr. Andrews will not let you bring up here?

A. I gave you the account in my sworn answer, taken from the books.

(Question repeated.)

464 A. All the receipts and disbursements of the firm are shown upon those books.

Q. Who furnished this money?

A. It was borrowed.

Q. From whom?

A. Various banks and parties.

Q. Your books show from whom it was borrowed, too, I suppose?

A. I should judge not, all of them. In the ordinary course of bookkeeping a note is discounted—the books would not necessarily show. That $36,000 was borrowed of Johnson & Bros., of Baltimore. Money was borrowed of all the banks we had business with, all the time, in the ordinary course of business. We carried a large floating debt. First with one bank and then with another, with various banks, all at the same time.

465 Q. Was this money borrowed by the firm, or by the members of it individually?

A. Borrowed in the name of the firm.

Q. What security was given for it, if any?

A. That is a very difficult question to answer, because in the ordinary run of business through two years, all kinds of securities were given, and sometimes Col. Andrews endorsed a note personally, and got it discounted, and one loan we made by a mortgage upon our property. Ordinary banking business, generally by giving endorsements in the various methods which business men use with banks.

Q. When did the receipts from the government contract begin to come in?

466 A. The first payment was made in Feb. of '72.

Q. By this agreement the members of the firm were each allowed to draw twenty-five hundred dollars a year?

A. Yes, sir.

Q. Have they done that?

A. Yes, sir.

Q. Beginning at what period?

A. At the formation of the copartnership.

Q. When the first money was received from the government contract, did they take back pay from it?

A. Not at that particular time. It was the custom of the members of the firm to draw fifty dollars, or whatever they wanted for their personal expenses up to that amount, and at the end of the year the accounts were balanced, but we drew it from the date to the end of the year.

467 Q. How was the money for salaries drawn for each of the members?

A. When a man wanted a small check for money, he would ask for it, and would have it charged to his account.

Q. Who gave the checks?

A. I kept the books at the time.

Q. You had authority to draw checks?

A. No. Checks were signed by two members of the firm. Either two members of the copartnership had authority to sign checks.

Q. Did the two sign checks in their own individual names, or did they write the names of Andrews, Ordway & Green twice?

A. In their individual names. Under the articles of copartnership you will see the name of the firm was never to be signed except under the power of attorney.

468 Q. Which two usually signed those checks?

A. It was generally the custom for Andrews and myself to sign the checks in the same way that the president and treasurer of a corporation sign checks. That was a matter of mutual agreement.

Q. How long did the firm keep its account with the State Bank?

A. It is impossible for me to answer that.

Q. Do they keep them there yet?

A. The firm have no bank account now.

Q. Did it keep the account there when the firm ceased to have a bank account?

A. No, sir; at the Planters' Bank then.

Q. When was it transferred to the Planters' Bank?

A. I have not the slightest idea. I could not state the date.

469 Q. Can you come within a year of it?

A. I do not think I could.

Q. Try.

A. I have not the slightest data. I suppose we had an account at

the Planters' Bank, but I have not the slightest idea. We might have had an account at both banks at the same time.

Q. Did the firm, during its existence, keep an account at any other bank than the State Bank and the Planters' Bank?

A. I think not.

Q. You are not certain?

A. I believe we did have a small account at the Richmond Bank and Insurance Company. We generally kept an account wherever he could get an accommodation with money.

Q. Where are the bank-books and checks of the firm?

470 A. With the books and papers of the firm.

Q. They are all in existence?

A. Yes, sir.

Q. In whose custody are they?

A. I do not know that I could say in whose custody they are; probably in the custody of Bradley T. Johnson; not in his actual possession, but in his custody as the arbitrator of our affairs.

Q. In whose actual possession?

A. In the actual possession of Col. Andrews.

Q. I understand that J. Condit Smith first became interested with you in this matter early in the panic of '73?

A. Yes, sir.

Q. Please begin at that time, and state his business relations with you, and with Andrews, Ordway & Green, down to the present time, fully?

471 A. In the fall of 1873, the firm of Andrews, Ordway & Green were having a very large debt which they were unable to pay, and which they were called upon to pay. They had spent a large amount of money; more than they had made, and which they had borrowed, and had to pay. I tried to find somebody to make a loan, or to carry us over. I went to New York, and made the proposition to Col. Smith to loan us some money. I made a negotiation with him, and we finally succeeded, and he loaned us at that time $60,000. I gave him an order on the disbursing officer of the government authorizing him to draw money under the contract, so that he might be secured,

472 and agreed to pay him back this money in installments until it was wholly returned to him. After I had completed the negotiation with him, and had gotten the loan from him, I still found that our condition was very unsatisfactory. In fact, insolvent, practically, so far as ready means were concerned. I had only bettered our condition by changing the loan; simply borrowed from one person to pay another, and we were practically in no better condition. I therefore, after thinking the matter over, and talking with my partners in regard to it, told them that the only thing I could see to be done was to endeavor to make an actual sale of the interest in our business to some person,

473 instead of going on constantly borrowing money and paying heavy amount of interest; that it would take us an indefinite time to make money enough to pay what we had expended; what we were behind. I then suggested to Col. Smith that instead of loaning us this money that he buy a portion or interest in the business. Negotiations were carried on for that purpose until Feb., '74, several months, and I finally consummated them with him with the agreement that he would pay $75,000 for one-fourth interest in the property and business, provided the business should go on as a corporation instead of a general copartnership, in order that the amount of its liabilities might be known and

474 limited, as he would not be on the ground to conduct the business.

That was consummated by an act of ncorporation, and the transfer to that corporation of the property, and he took his amount of the money in the stock of that incorporation; on the condition, also, that Col. Andrews, to whom the firm was also indebted for a very large amount of money, and took $36,000 of what he had advanced to the firm in stock of the company. The company further assumed $42,000 of the debts of the firm.

Q. Please go on, and bring your narrative of J. Condit Smith's affairs in connection with the business down to the present time?

A. The corporation was formed immediately, and organized, and
475 J. Condit Smith was elected as president of the corporation. He has since continued in that capacity.

Q. Is that all?

A. There is no other business except the loan individually that I made of Col. Smith, of which I have spoken.

Q. You have heretofore stated that one of the checks that you received on the 4th of January last was transferred by you to Mr. Smith. Why was that done?

A. Mr. Smith has since the formation of the company advanced large amounts of money to the company to conduct its business, for which they are indebted to him.

Q. You omitted that in your narrative just now?

476 A. Simply because I know it as a fact, but not officially, not being the treasurer or auditor of the company. I know it is a matter of fact that the company is indebted to Col. Smith for the $30,000 in round numbers. I do not know the exact amount; and also he has probably twenty-five or thirty thousand dollars' worth of acceptances that he gives the company the use of.

Q. What does the company pay for the use of this money?

A. They are paying nothing for the acceptances, and I suppose the treasurer allows him interest on the money he advances?

Q. At what rate?

A. I have not the slightest idea.

Q. You are not conversant with the affairs of the company just now?

477 A. I am not cognizant of that portion. I am cognizant of all the affairs of the company, but as to its financial affairs, I have nothing to do with it.

Q. What did you pay him for the $60,000 you got in '73?

A. I agreed to give him 4 per cent. of the 15 per cent.

Q. For the use of the $60,000?

A. Yes, sir.

Q. Was that paid him?

A. This was succeeded by these subsequent negotiations of which I have told you, which took the place of that agreement.

Q. To whom does that fifteen per cent. belong since the formation of the company?

A. To the company itself.

Q. Prior to the time you entered into the bond with Mr. Shedd,
478 a copy of which is appended to the bill in this case, what agreement had you made with persons other than Andrews and Green with reference to your interest in this contract?

A. My agreement with Mr. Washburne.

Q. Is that the only other agreement prior in date to Mr. Shedd's

A. I had an agreement with a party named Farrar in Washington.

Q. Was Mr. Farrar the only person interested in that?

A. There were other' interested with him, I believe, at the time.

Q. Who were they?

A. I am not certain of all the parties interested, but I know of two who were interested with him. One was a Mr. Lockwood, and the other was McKibben.

479 Q. When was the Farrar agreement made, and what was it?

A. I think it was made in the winter of '72—in the winter of '71-2; somewhere about that time; after the contract was signed; after the contract was made.

Q. What was it?

A. I gave my notes for twenty-five thousand dollars, the payment of which was dependent on my making a profit out of the contract, and so endorsed across the face of them.

Q. What security did you give him?

A. None in the world.

Q. Has that matter been settled?

A. Settled to this extent: I never made any profits, and never paid any of the notes.

Q. Has it not been settled in any other way?

480 A. No, sir; the notes are still in their hands.

Q. Has there ever been any attempt at settlement made?

A. Yes, sir; the' put the first note that came due in the bank for payment. It was protested for non-payment.

Q. Did they give you twenty-five thousand dollars?

A. No, sir.

Q. What did they give you?

A. The' did not give me anything except their assistance in obtaining the contract.

Q. Assistance of what nature?

A. That I cannot say. It is like a good many other people in Washington, who thought they gave me assistance, but I do not know what it was, but still I have to pay them for it. They led me to believe
481 they had necessary influence and power that I would need, and I agreed to pay them for it.

Q. That was the only consideration for those notes?

A. Yes, sir.

Q. Have you told us now of all the arrangements prior to Shedd's with reference to this business?

A. I had an agreement. I—I do not know whether it relates to this business or not, with Mr. George Grant, but what the date of it is I have no recollection; whether it was before or after the agreement with Mr. Shedd. What is the date of his agreement?

COUNSEL. January 1st, 1872, is the date of the bond.

A. Yes, sir; this other was subsequent to that.

Q. About when was the agreement with Grant made?

482 A. I think it was made in the summer of '72, but I will not be certain. I think it was some time during the summer or fall, perhaps, of '72.

Q. What was that agreement?

A. Acknowledgement of indebtedness on my part to him of twenty-five thousand dollars.

Q. What did he give for it?

(Mr. Morris desires an objection to be noted to all this testimony.)

A. He did not give anything for it.

Q. What was the consideration for it?

A. The consideration was that previously I had entered into an agree-

ment with him for a loan of fifty thousand dollars, for which I was
483 to give him an interest with me. Subsequently he returned to England for the purpose of getting the money and sending it over to me. After he left I found I could not carry out my agreement and take his fifty thousand dollars, and cabled him to that effect. When he returned to this country to claim*ed* damages for non-fulfillment.

Q. And you gave this obligation for twenty-five thousand dollars as satisfaction?

A. As liquidated damages.

Q. What was the nature of the obligation you gave him?

A. Acknowledging that I was indebted to him in the sum of twenty-five thousand dollars.

Q. Is that the whole agreement?

A. No, sir; the agreement is quite a long one, and goes on to
484 indicate that I will pay him out of the profits I hope to make out of that contract.

Q. Is that agreement in writing?

A. Yes, sir.

Q. Do you know where it is?

A. Yes, sir; it is in Richmond.

Q. Was there not a suit brought on it?

A. No, sir. They have threatened to bring a suit.

Q. Ever brought one?

A. No, sir; not to my knowledge. His attorney notified me they should bring suit. I replied to him it was utterly unnecessary for him to bring suit. I thought I would go ahead and let him do it. I did not have anything to pay it with.

Q. Is that all that has been done about that matter?

A. That is all that has been done now, to my knowledge. I
485 have heard nothing from them in reply to that since they said they would bring suit. I never received any further notification from them.

Q. When you' business connection with Mr. J. Condit Smith began, did you acquaint him with your contract with Mr. Shedd?

A. No, sir.

Q. When did you make him acquainted with it, if ever?

A. After you brought out an injunction.

Q. On the day that the restraining order was served on you?

A. No, sir; not until subsequent to that time. I did not see him.

Q. By the gov't contract, 10 per cent. of the amount to be paid you, is to be retained until the termination of the contract. Has this
486 10 per cent. been paid you on the State Dep't building?

A. Yes, sir; but you are in error about 10 per cent. of the contract. They retained 10 per cent. on the stone; not on the contract. The cutting work is paid for. The whole stone for the south wing was settled and paid for and regarded as a completion of the contract.

Q. How much did that 10 per cent. amount to?

A. They never reserved any. They make payments on account as the stone is delivered, and when the whole wing is finished they pay the balance. They never make any reservation, although it is specified in the contract.

Q. Since you were examined before, have you obtained any-
487 thing in reference to the amount of stripping done at the Westham quarry for the next year's work?

A. No, sir. I have not been to the quarry since I have been here before.

Q. How long since you have been at the quarry?

A. At least six months.

Q. Do I understand you to say that the history you have given of Mr. Smith's dealings with yourself and Andrews and Green is complete?

A. I think so. I do not think of anything else. There is nothing to be concealed about it. I think I have given every transaction that has ever occurred.

Q. Has not there been recently a conveyance made to him of the entire concern?

488 WITNESS. Of the Westham Granite Company?

COUNSEL. Yes.

A. No.

Q. No action has been taken with regard to that?

A. No, sir.

Q. Has it been conveyed to anybody?

A. The property stands in the name of the Westham Granite Co.

Q. With reference to the $36,000.00 advanced the concern by Mr. Andrews, what compensation did he receive for the use of that money?

WITNESS. What $36,000.00 do you mean; that I alluded to in my testimony that he took stock as a portion of his debt?

COUNSEL. Yes.

A. The debt owed him was more than that. He took $36,000.00

489 of his debt in stock. He was always allowed interest for the money he advanced to the firm.

Q. Simply interest and nothing more?

A. Simply interest. I do not remember the rate. I think it was either 10 or 12 per cent.; 12 per cent., I think.

Q. Do I understand you to say you have made no profits out of this contract?

A. None whatever. I have never derived nor drawn a dollar from it, except my annual salary.

Q. How long has that been your opinion?

A. That is not a question of an opinion. It is a matter of fact.

Q. How long have you known that as a fact?

A. As long as I have known that I did not draw any. I have always known it.

490 Q. You have always known it?

A. I have always known I did not draw any. You asked me what amount of money I had drawn. I have not drawn any. I was always looking forward to drawing some.

Q. Are there any profits coming to you that you have not drawn?

A. That is a question that it is utterly impossible for me to answer. The question is whether there is any profits. No profits can accrue to the firm of Andrews, Ordway and Green until they pay their debts. If it absorbs the whole of their assets to pay them it would not leave much profit.

Q. Bradley T. Johnson then holds the key to this problem?

A. Yes, sir.

491 Q. He will not unlock it until you pay him the money you owe him?

A. Until I settle my personal indebtedness to him.

Q. And that you are not able to pay him?

A. No, sir.

Q. Will you tell us what the probability is we will ever reach a solution of this question?

A. My house is being sold now on account of my indebtedness. I

will see what amount of debt that will pay. If it pays him sufficient I suppose he will act. He does not consider it right in him to act as an arbitrator to decide interests where he has a personal interest in one of the parties involved in the arbitration.

Q. What is the value of the house?

492 A. It is impossible for me to say. It cost me about $15,000.00. I suppose that is about the value.

Q. Is it mortgaged?

A. Yes, sir.

Q. To what extent?

A. Something over $17,000.00.

Q. Do you recognize this letter? (Handing witness a letter.)

A. Yes, sir.

Q. Did you write that and mail it?

A. Yes, sir.

(Letter thus identified by witness dated "Richmond, Dec. 21, 1874," addressed to Messrs. Stanton and Worthington, signed by the witness, is offered in evidence and marked Exhibit R. G. S. No. 8, and filed herewith.)

Q. By the government contract you assumed to lease the Westham granite quarry. Did you have title to the quarry?

493 A. By lease.

Q. By lease from whom?

A. From the owners, Andrews and Green.

Q. Is that lease on record at Richmond?

A. Yes, sir; in court.

Q. For how many years was the lease given?

A. Not any specific number of years. It is leased the same as the contract with the U. S. called for; just a copy of that. They leased to me and I leased to the govt., and both leases convey the same.

Q. You have stated that at the time the govt. contract was entered into Andrews and Green were engaged in an extensive and profitable business. By the articles of copartnership you were to have a

494 share in the profits of the business. Did you receive them?

WITNESS. The articles of copartnership—I was not interested in their previous business, but whatever we did afterwards.

Q. Did you ever do anything afterwards?

A. Ordinary run of business. We do whatever business we can get to do.

Q. How much business did you do outside of the contract referred to in the proceedings in this case?

A. That is all stated in my answer there of the amounts received, $16,000.00, outside, and then the contract with the Western Union Telegraph Co. It is all referred to.

Q. Has the firm done as large an outside business since its or-

495 ganization as Andrews and Green did before the government contract was entered into?

A. No, sir. I should judge not. I do not know what the amount of their business was before that, as I was not even personally acquainted with them until a short time before that. Our first work was to supply the gov't contract, and then do whatever work we had the time and capacity to do.

Q. You have stated that they were doing a large business before the contract was entered into; how do you know that?

A. I judged so from the quarry. It was a good quarry. They were

regularly in business. I do not know what amount of business they did.

496 Q. Is it your judgment that the firm did as large a private business after the contract was entered into as Andrews and Green did before?

A. Yes, sir; we did larger, because we had that Western Union contract. They never had a contract of that size. Colonel Andrews said to me that in the length of time that he was in business he spent more money in developing the quarry than they did business for; whatever the amount of business was, I do not know.

Q. When was the extension of this contract to the east wing of the department building obtained?

A. It was somewhere about '74, last year.

497 Q. Was that done by a written agreement?

A. It was done by the Secretary of State.

Q. Was there any writing signed by you in connection with it?

A. Yes, sir; he appended the writing to the contract itself.

Q. Simply an endorsement of the original contract?

A. It was an additional sheet of paper affixed to the contract.

Q. Have you a copy of that?

A. No, sir; it is on the contract itself, and on file in the department. It simply continues the contract on the same terms and conditions.

Q. What bond did you give in entering into this contract?

A. $50,000.

Q. Who are your bondsmen?

A. Mr. Lockwood and Gen. Cook.

498 Q. What is Mr. Cook's full name?

A. I do not remember; I think it is Edward. I am not certain. I do not know him very well.

Q. Are you able to tell me what was the quantity of granite furnished in connection with the Western Union Telegraph Company?

A. I can tell you very nearly the amount in round numbers; about 20,000 cubic feet.

Q. How much was furnished to the Centennial building that is included in this statement—in your supplemental answer?

A. That includes that.

Q. How much was that?

499 A. My original estimate of the Centennial building was about 38,000 cubic feet.

Q. About how much per cubic foot did your eceive for the stone furnished the Centennial building?

A. It is dressed stone not sold as stone. We contracted to build the building for $125,000.

Q. About how much per cubic foot did it amount to dressed?

A. That would be about $3 or $3.25.

Q. What price per cubic foot did you receive for the stone furnished to the Western Union Telegraph Company?

A. No price per cubic foot; we built the building in the same way; we contracted for so much money.

500 Q. How much did it amount to per cubic foot for dressed stone?

A. $7. The character of the work was very much more ornate on that than on the Centennial building.

Counsel for the complainant, not being able to conclude the examination in chief, requested the witness to appear on Wednesday next, June 16th, at 11 a. m., for further examination.

Thereupon the commission adjourned until Wednesday next, at 11 a. m.

JAS. O. CLEPHANE,
Examiner in Chancery.

501 WASHINGTON, D. C., *June*, 1875.

Commission met pursuant to adjournment. Present, A. S. Worthington, esq., of counsel for the complainant.

By agreement of counsel, an adjournment was had until July 3rd, 1875, at the law office of Messrs. Merrick & Morris, F st., in this city, a' 12 m.

JAS. O. CLEPHANE,
Examiner in Chancery.

WASHINGTON, D. C., *July 3rd*, 1875.

Commission met pursuant to adjournment. Present, counsel on either side. The examination of Albert Ordway was resumed as follows:

By Mr. WORTHINGTON:

Q. Have you produced to-day at my request the books of Andrews, Ordway and Green, and those of the Westham Granite Company, or some of them?

A. I have here all of them, except one immaterial book of the Westham Granite Company, which is a mere memorandum-book, called a special ledger.

Q. Please enumerate the books that you have produced.

A. The cash-book, journal, ledger, and sales-book of Andrews,
502 Ordway and Green, special books, the result of which is in the general books containing accounts of the Western Union Telegraph Company contract; cash-book, journal, ledger, and the minutes and sale-book of the Westham Granite Company.

Q. Do those books show fully the receipts and disbursements of the firm and the company since August, 1871?

A. Yes, sir; they contain the whole; all the business of the company.

Q. Are these the books from which the statement of the account contained in your supplementary answer in this case was made up?

A. Yes, sir.

Q. Please take the proper book and turn to the expense account of Andrews, Ordway and Green, and state the amount of disbursements on that account down to the first of January last.

A. The expenses, with the exception of the expenses in the cutting department, amount to $48,774.49. These are expenditures for which no material or tangible property was received in exchange. It includes the salaries of officers, the salaries of clerks, draftsman's salary, office-
rent, stationary expense; all ordinary expenses that were in-
503 curred. In addition to that are the expenses of the cutting department, which, from my memory, I would say were about $8,000. The book containing the account of the cutting department I intended to have had here, but it seems to be missing. Being sick, I did not put up the books myself, and I supposed that was here. I gave orders to have that sent with the others, and I will produce it at the next meeting.

Q. Included in this expense account is one entry dated Nov. 29th, 1873, to cash, $5,986.30. Please inform me what is meant by th e item.

A. The $986.30 is made up of salary accounts and sundry other items.

The remaining $5,000 was paid to James O'Conner, president of the Central National Bank of Baltimore, in the payment of our loans from the Central National Bank. We paid him $5,000 over and above the amount of the loan as damages for the loan not being paid when due—damages claimed by him.

Q. How much money had you borrowed from this bank, and when did you borrow it?

A. About $75,000 from them. The first loan was made of them on the first of March, 1873, and the balance of the $75,000 in July, 1873. That is, the bank gave us $26,958.36, and we gave our note for
504 $30,000 at one year. The remainder, $3,046.64, they retained as discount an' interest. This note was paid on the 16th of July. We paid it out of the new negotiations made with them for $75,000, of which they retained $18,000 to our credit, and allowed us to check $57,000 of the $57,000; they paid the $30,000 note, which gave us actually $27,000 more. This last transaction is not entered in the book at all.

Q. So that you had to borrow $18,000 more than you wanted?

A. Yes, sir.

Q. Did you give a new note on the 16th of July?

A. Yes, sir.

Q. For how much?

A. $75,000.

Q. And left $18,000 on deposit in the bank besides?

A. Yes, sir. A credit that would be applied to paying the $75,000.

Q. What amount of cash did you actually receive in July?

A. $57,000.

Q. But $30,000 of that was applied to the payment of the old note?

A. Yes, sir.

Q. Then you actually received only $27,000?

A. Only $27,000 additional.

Q. Was there any discount on that?

A. Yes, sir.

Q. What was the amount of the discount?

A. $3,163.83.

Q. When did the note given on the 16th of July mature?

A. It was payable on demand.

505 Q. How many notes were given on the 16th of July, and for what amounts, and when did they mature?

A. I do not remember the amounts into which it was divided. It was divided, I think, into three notes, all of them at the same time payable on demand.

Q. When was demand made?

A. The first demand was made in the beginning of October, 1873, during the panic.

Q. What was done about the payment at that time?

A. They charged it against the money that I put on deposit, and I drew my month's pay for September from the United States Government and deposited it in the bank, and they charged up against that deposit $27,000.

Q. How and when was this indebtedness finally paid?

A. The charging up of the $27,000 prevented me from paying the hands; threw the business into confusion; and they notified me on the following month they would charge up the balance, which would have rendered the business completely overthrown.

Q. What balance?

A. The other $30,000. They charged up $27,000, leaving $30,000, which they informed me they would charge up on the next month's
506 deposit, and I was unable to pay the hands, and I then went to New York to negotiate with J. Condit Smith for a loan in place of the one I had with them, and I succeeded in negotiating with him, and he paid the balance over to them in Nov.

Q. Then what was the amount he paid them and what day did he pay it?

A. Nov. 19th. He paid them $35,000.

Q. Did you have any agreement with the banks except the giving of your notes?

A. None except the verbal understanding.

Q. What was the verbal understanding?

A. The verbal understanding was that they would not call for any payment until Nov., and that if I still needed money they would, in all probability, make some arrangement to continue the loan, or such amount of it as I needed at that time.

Q. They did not keep their promise?

A. No, sir.

Q. Did you keep your promise to them, except the failure to pay the money when demanded?

A. Certainly.

Q. Still you paid them $5,000?

A. More than what I owed them.

Q. Is there any explanation of that proceeding further than what you have given?

A. None in the world. We have a suit against them now to
507 recover the amount. It was a sort of highwayman's proceeding. They refused to deliver up our collaterals when that was paid, and they were vitally necessary to us even if it did require the payment of $5,000. We were in a condition that would not admit of our waiting.

Q. What were those collaterals?

A. An order on the State Department for the payment of all checks due on the contract to the Central National Bank of Baltimore.

Q. Then you had simply given them orders on the department to pay them the amount of these notes?

A. Every month when I drew my accounts, the check was made payable to the Central National Bank of Baltimore.

Q. Then what was to prevent you from allowing the bank to collect these checks to the amount of the indebtedness, and using the money you borrowed from Smith in your business, and so avoid paying the $5,000 for nothing?

A. Because they could not draw the amount. They had to be receipted by me, but when the check was given for them it was given payable to the Central National Bank, and therefore I did not draw the accounts in Nov. I refused to sign the receipts and draw the accounts, because if the amount was put in the bank, it would simply be swallowed by them.

Q. Then they could not use this col'atteral at all without your
508 signature?

A. No, sir; I let the accounts remain undrawn until I got the loan from Smith.

Q. When did you effect the loan from Smith?

A. It was in the early part of Nov.; I forgot the exact date. It was

somewhere between the 10th and the 19th. He finally settled with the Central National Bank on the 19th.

Q. He advanced $60,000, I understand?

A. Yes, sir.

Q. Now in what way did he advance that amount?

A. In cash.

Q. To whom did he pay it?

A. He gave $20,000 to the firm in money, he paid the balance to the bank. He gave us $20,000 in money and the balance he paid to the bank, and they turned over to him the col'atterals.

Q. I wish you would state more definitely than you have already done what accounts were kept in the book which you have accidentally failed to produce this morning?

A. There was no account except the cutting of the stone for the State Department building and some small expenses attending that which were not paid for by the government: kept a seperate account of.

Q. Nothing else is included in that book?

A. Nothing else but the cutting of the stone for the State Department building.

509 Q. What do the other expenses, not paid by the government, included in that book, amount to as nearly as you can recollect, and into what classes are they divided?

A. Nothing but "expense" and a small amount of "labor" about the yard which is not paid for by the government, and the use of mule and cart about the yard, which is not paid for by the government. I should judge the whole of the items might amount to $14,000 for two years.

Q. How much of that is labor?

A. I should judge probably $5,000 for labor in the two years.

Q. Now, please turn to the proper book and state what amount appears to have been paid by Andrews, Ordway and Green for labor from the formation of the partnership to the present time, or until the firm ceased to do business, not including other payments that were reimbursed by the government under the State Department contract?

A. $226,140.85.

Q. Now please turn to the proper book of the Westham Granite Company, and state what was the amount paid out by the company down to the 1st of January, 1875.

A. $109,348.11.

Q. On these are any deductions to be made from this labor

510 account; if so, what are they?

A. Yes, sir. $10,354.07; of this sum $7,660.03 is for labor in the construction of a branch railroad to the quarry, and charged to the Richmond and Danville Railroad Co., as by our agreement with them they were to pay us this expenditure in transportation. Then $500 is the estimated amount of labor done on permanent improvements at the quarry, and $2,000 is for work done on the Republican building in this city, for which we were to be paid and have been paid in part.

Q. Is this the railroad you spoke of in your testimony the other day?

A. Yes, sir.

Q. What amount of sales were made by Andrews, Ordway and Green, and the Westham Granite Company outside of the government contract—the Western Union contract and the Centennial contract—prior to January first, 1875?

A. $33,562.97. The written return which I made in my answer I find was incorrect from an oversight of one page of the ledger, amounting to $16,941.03.

Q. Have you gone over the accounts in the Westham Granite Company ledger with me since we have been here; and, if so, do you find any receipts from private sales not included in your last answer? If so, what is the amount?

511 I find $11,528.02 additional, as receipts for cutting stone sold. My previous answer covered only the price of the stone. The entire receipts outside of the three principal contracts down to January 1st, 1875, have been $45,090.99.

Q. Have you produced to day copies of your contract with Mr. Washburn and the copy of the extension of the State Department contract to the remainder of the building?

A. Yes, sir.

(Witness produces the papers referred to, and they are offered in evidence, and marked Exhibits No. 9 & 10.)

Q. At what time, with reference to the making of the contract, did you enter into the articles of copartnership with Washburn?

A. It was entered into—I could not answer the question positively, but it was after the execution of the contract.

Q. How long after?

A. I do not remember the dates. The dates are on that paper there (after examining paper referred to), 25th of Nov. That would be nine days after. The contract is on the 16th of Nov. That is on the 25th.

Q. Were you not mistaken the other day in fixing the date of the signing the contract some time in August, 1871?

512 A. I might have been as to the signing of the contract. The contract, I knew, was awarded to me at that time, but I cannot give the exact date as to the time the first contract was signed, the one that was annulled, and the new one written.

Q. Was not the reformed contract—that is, the contract that was signed after the mistake was corrected—dated the same day as the contract which was originally signed?

A. No, sir; there was one written before that. It was on the 16th of the month, but whether the 16th of September or the 16th of October I could not say. I had a copy of it on which the erasure was made.

Q. Do you remember what the error was which required the contract to be corrected?

A. No, sir; but it was not a material error, if I remember aright. It was simply some clerical error.

Q. How long did the agreement between Mr. Washburn and yourself expressed in these articles of copartnership remain in force unchanged?

A. Until the completion of the south wing, as expressed in the copartnership articles.

Q. I understand you to have testified already that before that

513 time a change was made, whereby Andrews, Ordway and Green received a part of this 15 per cent. on the State Department building?

A. Yes, sir; a change was made very soon afterwards. You asked me how long the copartnership continued. That change was made in January, 1872, I think.

Q. Was the change made in writing?

A. I think there was a writing; I am very sure there was, in which he turned over 6 per cent. of the 15.

Q. What was the consideration of his turning over this 6 per cent. of the 15 per cent.?

A. The consideration expressed in the paper was that I was to perform

the work at the yard instead of himself. By the terms of the original co-partnership he was to perform the labor.

Q. What was the real consideration of his giving that 6 per cent. on this $150,000?

A. That was a portion of it. The balance of the consideration was—I told him I could not stand dividing so much of the profit with him; could not get along.

Q. Where do the payments of this 6 per cent., or 15 per cent., appear on the books which you have produced here?

A. They are on the cutting department ledger. That is not here.

514 (Counsel for the complainant requests the defendant to produce the book referred to at the next session.

WITNESS. I will do so.

Q. On page 106 of the journal of Andrews, Ordway and Green I find the following entry: "March 31st, 1875, Albert Ordway's private account, dr. To stock, $634.51, amount assumed by him out of his extra profits towards paying J. Condit Smith his share of profits for money advanced." Please explain this entry.

A. J. Condit Smith was, under the original agreement, to receive 4 per cent. of the 15 per cent. as remuneration for his loans. The firm has only agreed to authorize me to make negotiations with him to pay 3 per cent. Under the partnership agreement of Andrews, Ordway and Green, if there were any profits, I was entitled to $\frac{14}{36}$ of the profits of the contract, and they each to $\frac{11}{36}$. In order to accomplish the negotiation with Col. Smith and yield to his demand of 4 per cent., I was willing to give up my difference of profit, if there were any, and have the

515 profits divided equally, and throw in that extra difference to him. Subsequently, when the agreement with him was changed, I charged off that one per cent. for the months that he was in, between the time of the loan and the time he bought in, as to be paid by me, if there were any profits coming to me, and I received them in the proportion of $\frac{14}{36}$. That was entirely a suppositious entry; it was in case I received any. In other words, if any profits come to me, I am to pay $634.51 out of it.

Q. Do I understand that the consideration of Mr. Smith's loan of $60,000 was an agreement to pay him $\frac{4}{15}$ of the 15 per cent.

A. Yes, sir.

Q. Was there any other consideration?

A. No other consideration.

Q. Was he to have interest on the money?

A. No, sir. He was to rebate interest as paid.

Q. Do I understand that the $\frac{4}{15}$ was to be paid him until it extinguished the debt and interest on it, or was paid him for the use of the money?

A. I paid him for the use of the money.

Q. Then what do you mean by saying that he was to rebate the interest as the money was paid from the $\frac{4}{15}$?

516 A. The money was not paid him from the $\frac{4}{15}$. The $\frac{4}{15}$ was paid him as a remuneration, or interest upon his loan, and the agreement was, as we paid him the principal of the loan, that he would rebate interest upon it.

Q. I find an entry here in the company cash-book, dated "January 31st, 1875." The entry is:

"Cash credited by real estate, $3,600, paid by Albert Ordway on account of purchase of Ruffin Quarry."

Please explain that item?

A. The company purchased a piece of property there, and made a partial payment on it.

Q. Where is that quarry?

A. On the Ruffin plantation, below Richmond.

Q. What price was paid for it?

A. $12,500 for half of it.

Q. How much of the purchase money has been paid?

A. $3,600.

Q. Is that $3,600 included in your disbursements stated in your answer?

A. No, sir.

Q. What is the value of the real estate, materials, tools, &c., owned by the Westham Granite Company in connection with this business at the present time?

A. We estimated them as of the value of the stock of the company—$300,000.

517 Q. What was the estimated value of the real estate, material, tools, &c., of Andrews, Ordway and Green in August, 1871?

A. I estimated them at that time at $60,000.

Q. Have you visited the Westham quarry recently?

A. No, s r, not rece: tly.

Q. How long ago?

A. Not since last fall.

Q. On page 73 of the company's cash book is an entry dated March the 4th, 1875, of $110 paid Simons & Keimingham for lithographing a mortgage. What mortgage was that?

A. Mortgage issued by the Westham Granite Company, $100,000.

Q. Of what property?

A. Of all its property, real and personal.

Q. In whose favor was the mortgage?

A. The trustees of J. Condit Smith and Bradley T. Johnson. The purpose of the mortgage was the issuing of 100 bonds of $1,000 each.

Q. Was this the first mortgage on their real estate?

A. Yes, sir.

Q. Have any of the bonds been issued?

A. Yes, sir.

Q. To whom?

A. Issued to nobody. They are coupon bonds.

Q. Have they been put on the market?

A. That I cannot say; they have been put into the hands of the president and treasurer of the company for negotiation.

518 Q. You do not know how many of them have been sold?

A. No, sir; not of my own knowledge.

Q. All this was done with your knowledge and consent?

A. Yes, sir. I was one of the stockholders of the company who voted for it.

Q. When was it done?

A. I cannot say the month; I think it was February—somewhere in February or March. I am not certain of the date of the mortgage?

Q. Are you certain it was after this suit was commenced?

A. Oh, yes, sir. On the 4th of February a meeting of the company was held. I was wrong in saying I voted. I did not vote, because I could not vote, because there was no stock standing in my original name.

Q. The votes were cast, I suppose, by the firm?

A. By the trustee for the firm.

Q. Did Smith and Andrews know of this suit at the time that measure was carried?

A. I think they did about that time. I am not certain as to the date.

Q. Did you keep them from a knowledge of this suit a month or two after it was commenced?

A. Some little time; I do not remember the exact time.

519 Q. How long a time did you keep from them a knowledge that the suit had been commenced?

A. I could not state the exact time.

Q. State it as nearly as you can.

A. Perhaps a month. I do not think the injunction would hold, and I just let it go. I would not bother them about it. Probably a month. I cannot say the exact time.

Q. Did you come to Washington, as usual, early in February, to make the usual monthly collections from the government?

A. No, sir; the government did not pay us anything then. They did not pay anything after the 4th of January.

Q. Because of the injunction or because there was nothing due?

A. There was money due us.

Q. Was nothing said by Smith or Andrews that you remember, about the 1st of February, as to the monthly collections then due?

A. We could not draw it from the government, anyhow, because there was no appropriation. There was no money in the Treasury. They had notified us in the middle of January that they could not pay us any more money.

520 Q. Until how long?

A. Until more money was appropriated.

Q. Have you not, in fact, collected money since then?

A. Yes, sir.

Q. When was the first collection made after the 4th of January?

A. Made the last month—I forget the date.

Q. Please turn to the books and see what they state on the subject.

(Witness does as requested, and then says: "June 1st, 1875, cash received from the United States from labor rolls—January, February, March, April."

Q. State the amount.

A. $40,394.73. Tools and materials, January, February, March, and April, $812.59; percentage, rolls, & materials, Jan., Feb'y, March, & Apr., $6,187.05.

Q. Is there any further entry during the month of moneys collected from the government, and if so, what are they?

A. June 9th, pay-rolls and materials for May, $2,589.30; percentage, $388.38.

Q. Who collected this money from the government?

A. I collected the money that is entered on the 1st of June, and that on the 9th, I think, was remitted by the disbursing officer.

521 Q. When you collected that money had you any reason to suppose that the preliminary injunction in this case was not in force?

A. No, sir.

Q. You violated it deliberately?

A. No, sir; on the contrary, Col. Smith, who had the checks, I told him before going to the Treasury to draw the checks to come and see Mr. Merrick, and see what arrangement could be made about the 15 per cent. that he could not draw. He came back and said he had seen Mr. Merrick and left with him the amount.

Q. Then that amount, representing the 15 per cent. of these payments, is in Mr. Merrick's hands?

A. I do not know; I suppose so.

Q. Then how does the money come to appear on your books as having been received from the company if it is in Mr. Merrick's hands?

A. That I cannot state. I do not keep these books. I suppose the bookkeeper entered it there to keep his account straight.

Q. Is there any corresponding entry to be found, showing the payment of the money over to Mr. Merrick or to anybody else?

A. No, sir; the only entry there is the payment of the roll. He has only got his book written up to the 11th.

522 Q. So far as the books show, the money is in the hands of the company?

A. Apparently; I do not know anything about the books of the company, though. The money was bonafiedly turned over by Mr. Smith, in good faith, to Mr. Merrick, as I told him to do. There was no desire to violate the injunction, whatever. It was the necessity of getting the money to pay the hands with.

Q. Did Andrews, Ordway and Green, during their time, furnish workmen at the quarry with supplies of any kind?

A. Yes, sir.

Q. Was there a store kept there?

A. Yes, sir.

Q. I' which the firm had an interest?

A. Yes, sir.

Without completing the examination of the witness, adjourned to meet on Monday, July 5th, at 9 1-2 o'clock, at the same place.

JAS. O. CLEPHANE,
Examiner in Chancery.

523 WASHINGTON, D. C., *July 5th*, 1875.

Commission met pursuant to adjournment at the law office of Merrick & Morris, F st., in this city. Present, counsel on either side.

Examination of Albert Ordway resumed.

By Mr. WORTHINGTON:

Q. Please turn to the proper entries and state what were the profits on that store account from August, 1871, to January 1st, 1875.

A. $5,519.12.

Q. This is profits only, I understand?

A. Yes, sir.

Q. Have you produced this morning the special ledger to which you referred *to* in your last examination?

A. Yes, sir.

Q. Please let me see it.

[Witness hands the same to counsel.]

Q. Please turn to that book that you have just produced and state what are the expenditures on account of "labor and expense," seperately, from August, '71, to January 1st, '75, in the cutting department.

A. Expenses, $7,916.76; labor, $6,430.95.

Q. These are the only disburs'ments not contained in the books which we examined on Saturday, I believe?

A. Yes, sir; all disbursement' except those that were reimbursed by the United States according to the contract.

524 Q. Now please give the dates and sums paid to Andrews, Ord'.

way & Green or to the Westham Granite Company on account of the 15 per cent.?

A. Andrews, Ordway & Green received on this account as follows:

April 6th,	1872	$1,053 44
May 24th,	"	2,614 68
June 10th,	"	2,854 17
July 3rd,	"	2,703 46
August 4th,	"	2,684 34
Sept. 4th,	"	3,402 35
October 5th,	"	3,152 91
November 9th,	"	3,392 44
Dec. 5th,	"	2,409 54
Jan. 6th,	'73	2,751 20
Feb. 5th,	"	3,322 75
March 11th,	"	2,041 73
April 4th,	"	2,445 60
May 3rd,	"	2,979 88
June 4th,	"	2,793 60
July 31st,	"	2,705 81
August 30th	"	2,896 01
Sept. 30th,	"	2,757 79
Oct. 31st,	"	2,714 93
Nov. 29th,	"	2,036 56
525 Dec. 31st,	"	$2,131 87
Jan. 31st,	1874	1,283 61
Feb. 28th,	"	391 55
		$57,520 22

All these sums were received on account of the south wing of the State Department building.

The Westham Granite Company has received on account of the 15 per cent. for cutting of the east wing of the department as follows:

Sept. 30th,	1874	$4,591 75
Oct. 31st,	"	4,715 60
Nov. 30th,	"	4,947 42
Dec. 30th,	"	4,045 57
		$18,300 34

Q. Are there any deductions to be made from these receipts except those which we have already set down under the head of expenditures on account of labor, expenditures, &c.

A. No, sir.

Q. The sums above set down as received by Andrews, Ordway & Green I understand to be the $\frac{85}{15}$ of the 15 per cent. which Mr. Washburn turned over to you.

A. Yes, sir.

Q. And you turned over to the company.

A. Yes, sir.

526 Q. What consideration passed between you & the company for this proceeding.

A. None whatever, except our partnership. It belonged to the company, it did not belong to me. I put the contract into the partnership; and all the proceeds of the contract went into the partnership.

Q. Now please give us the expenditures on account of discount & interest down to the 1st of Jan., 1875, & on account of material & tools?

A. Discount and interest, $31,310.39; materians & tools together, 76,045.90.

Q. Now please give us the expenditures on account of transportation & freight down to Jan. 1st, 1875?

A. $32,655.39.

Q. Are there any other items of expenditures pr'or to Jan. 1st, 1875, if so, what are they?

A. Building a railroad arch, $8,479.63; teaming account, 564.76; real estate, 9,810.10; barge, 2,419.14; shops & sheds & other permanent improvements of the granite yard, 14,719.09; buildings at the
527 quarry, 3,225.72. Those are all the expenditures of any consequence; there are others, which, in the aggregate, might amount to about a thousand dollars.

Q. In the supplemental answer filed in this case May 12th, 1875, expenditures on account of materials & tools, down to that date, are set down at about $47,000. You now state the expenditures on the same account down to Jan. 1st, 1875, to be about $75,000. Please explain this apparant discrepancy.

A. On looking at the book I find that the title "expenditures on account of the materials & tools" should be $60,483.61, instead of $76,045.90. This amount is larger than the amount given in the supplemental answer, as the supplemental answer only included the expenditures of Andrews, Ordway and Green. This includes that which has since been expended by the Westham Granite Company on the same account down to the 1st of Jan., 1875. In the statement of the expenditures on this account in the supplemental answer, I gave the estimated difference between the value of the tools on hand and the amount they had cost. In the present statement I give the entire cost of the tools and materials down to the first of Jan., 1875, without any deduction of the value of the tools and materials on hand on the first of Jan., 1875.

528 Q. Please state what has been the receipts of the Westham Granite Company from the first of Jan., 1875, down to the time you prepared the statement contained in your supplemental answer filed May 12th, 1875.

A. The receipts during that time on account of the 15 per cent. were $2,385.53; on account of the Centennial contract, 74,885.50. There had been some other receipts on account of private sales which I can obtain if you wish me to do so.

Mr. WORTHINGTON. I have all the information I desire as to the private sales.

Q. Who kept these books?

A. Those of Andrews, Ordway and Green were kept by me and transcribed by a clerk. Those of the Westham Granite Company were kept by the auditor of the company, Mr. Pickering.

Q. What was the value of the property on the first of Jan., 1875?

A. That is a very difficult question for me to answer. If you ask me what my opinion of its value is, I can give that.

Q. What is your opinion?

A. My opinion of its value would be $300,000 for all of its real and personal property. I have no idea it would bring that in the market.

Q. You mean it is worth that to the company having a paying business?

529 A. Yes, sir; my opinion is it is of that value. In the present

condition of the granite business, I do not think that it would bring anything like that.

Q. Have there been any effert, made to sell it?

A. No, sir. There have been efforts made to sell some of the stock of the company, which have failed.

Q. When were those made?

A. At all times during the past ten months, since the company was organized.

Q. Who made those attempts?

A. They were made by the president and treasurer under the direction of the board.

Q. Were they made to your personal knowledge, or do you speak only from information given to you by the president and treasurer?

A. I speak of information given by the board itself.

Q. During the last three years, have you kept any account of your personal expenses?

A. No, sir.

Q. Do you know about what they have been?

A. I should judge my personal expenses have been about $7,000 a year.

Q. What profit did the company realize on the Western Union contract as shown by the books?

530 A. There was an estimated profit on the books of $14,500. It is impossible to tell whether there was that profit or not, as that is arrived at by giving an arbitrary value to the stone.

Q. Did you keep seperate accounts of the receipts from that source?

A. Both the receipts and the expenditures, with the exception of the quarrying of the stone, which could not be kept seperate from the general quarrying, and an arbitrary value was put upon it in the job.

Q. By "arbitrary" you mean "estimated," I suppose?

A. Not estimated for that purpose; just assumed the valuation; what we considered the stone ought to be worth.

Q. Was the assignment of this 15 per cent. interest by Washburn to Andrews made at the same time that the $\frac{6}{15}$ per cent. was transfer'ed to Andrews, Ordway and Green?

A. No, sir; some time subsequent. In the following spring or summer, I think, they made the bargain.

Q. When the $50,000 was paid by Andrews for nine of the $\frac{1}{15}$, and the money was paid by Andrews in the spring or summer of '73?

A. In the spring or the summer of '72.

Q. Do you know whether Andrews paid cash?

531 A. Yes, sir; he paid in cash.

Q. Please turn to the discount and interest account of Andrews, Ordway & Green, and explain a few of the largest entries of that account.

A. Jan. 13th, 1872, there is an entry of $1,014.76 discount on a note of $10,974.34, at six months.

Q. State who that money was borrowed from.

A. If I remember rightly the note was discounted by Johnson & Co., of Baltimore—all these notes.

Q. What is the entry in the journal in relation to it?

A. Discounted with R. S. Andrews.

Q. According to the book, the transaction was with Andrews, and he received $1,014 discount?

A. Yes, sir.

Q. Do you know anything to the contrary of your own knowledge?

A. I could not state positively; it is a transaction so long ago that I do not remember exactly, but I am frequently in the habit of entering notes in his name for the reason that he took the notes and put his personal endorsement upon them, and got them discounted, and returned the proceeds to me.

Q. What is the next large item on account of discount, and what is the explanation of it?

A. Feb. 27th, $600 discount on our note of $5,600 at 12 months, which money we borrowed of Albert S. Andrews.

532 Q. Is he a relative of R. S. Andrews?

A. Yes, sir; he is his brother. He kept the store for us at that time, and had this money lying idle, and we borrowed it of him.

Q. What is the next principal item?

A. March 26th, 1872, discount $781.99; discount of two notes of $5,000 and $6,000 each—$11,000—at 12 months, personal notes of R. S. Andrews which we borrowed of him, and discounted with Johnson and Co., of Baltimore.

Q. Where did R. S. Andrews reside at that time?

A. In Baltimore. The next considerable item on this account is, Aug. 10th, 1872, renewed two notes given Jan. 13th and paid $792.72 discount. On that occasion we renewed our two notes with R. S. Andrews, one for $6,000 and one for $4,974.34; Aug. 22nd, paid $402.69 discount on a note of R. S. Andrews, which we borrowed of him and discounted in Baltimore with Johnson Brothers and Co.; September 20th, paid $532.50 discount on our note for $10,000 at four months, indorsed by R. S. Andrews and discounted with Johnson Brothers and Co., Baltimore; Feb. 4th, 1873, paid $4,306.50 on our note for $32,000 at 12 months, with Johnson Brothers and Co., of Baltimore. With that money we took up the notes which had matured at that time, which we had discounted

533 previously. March 1st, '78, paid $3,041.64 on note of Albert Ordway for $30,000 at one year, discounted with the Central Bank of Baltimore. July 16th, paid $3,350.10 discount on $57,000 borrowed of Central National Bank of Baltimore.

Q. Who conducted these last three negotiations with the Baltimore bank?

A. The one with Johnson Brothers and Co. was negotiated by Col. Andrews; the two with the Central National Bank of Baltimore were negotiated by myself.

Q. Where was Mr. Andrews at the time when you made these two negotiations with the Central National Bank?

A. I could not state exactly where he was at that time. Either in Richmond or Baltimore; one of the two.

Q. Who introduced you to the Central National Bank?

A. Mr. Steinberger.

Q. Who is he?

A. At that time he was doing nothing.

Q. Was he an acquaintance of Mr. Andrews?

A. No, sir; he was a personal acquaintance of mine.

Q. Was Mr. Andrews during this period engaged in any other business than that connected with this quarry?

A. Part of the time he was, and part of the time I do not think he was engaged in any regular business.

Q. What proportion of his time since Aug., '71, has he spent at Richmond?

534 A. I suppose probably one-half of it.

Q. What is the date of the first entry in the journal of Andrews, Ordway & Green?

A. 1872.

Q. In the cash book of Andrews, Ordway and Green I find several pages of entries apparently written at one time, and dated from Aug., '71, to Jan., '72. Where do these accounts come from?

A. They are old accounts between Green & Andrews in their copartnership, which, for the sake of settlement between them, I entered upon my books from various memoranda and books and papers which Mr. Green had at the quarry, so that they would reach a settlement. The accounts balance each other as they are entered on my books. It is a mere matter of convenience that I entered them on my books.

Q. Under your articles of copartnership with them, had you any interest in the sales made by them between Aug., '71, and Jan., '72?

A. Certainly. Our copartnership began on the 7th of August, but we did not begin to do any work until the 1st of Jan.

Q. Please to state whether there were any transactions, and if so what they were, on account of the disbursements or receipts on the first,
535 second, or third day of Jan., 1875, which would materially alter the state of the account as it stood on the 1st of Jan., 1875?

A. No, sir; there was no transactions between the 1st and 4th of Jan., of any kind.

Q. Of the large sums of money that has been paid on account of the Centennial contract since Jan. 1st, 1875, how much was due at that date on account of stone furnished, or cutting done, up to that time, as nearly as you can state it?

A. I could not state positively, but I should say probably $20,000. That would be about one month's work, generally what would be due us.

Q. What was due you at that date on account of the government contract, either for granite furnished, or on account of the 15 per cent. profit?

A. You might say, in round numbers, $4,000.

Q. Can you tell me any more definitely than you did the other day what became of the money you received through your cousin, George F. Ordway, from Mr. Shedd?

A. I could not give you any detailed account of it. I know that a considerable amount of money went into the development of that James River granite quarry that I testified about at that time, but how
536 much of it, I could not possibly say.

Q. About how much?

A. I should judge that probably 15 to 20,000 went in then. I would not swear to the amount, but I should judge from 15 to 20,000 went in then. Mr. Shedd held $50,000 of that stock belonging to Frank Ordway, as collateral. When Mr. Shedd's lawyer, Mr. Green, came to see me at the time when Frank Ordway failed, I told him that was not worth anything at all; that it was not worth ten cents on the dollar as a collateral, and it was at that time that I offered to substitute this agreement of *money* in order to help Mr. Shedd out of his difficulty.

Q. But by the agreement Mr. Shedd was required to deliver up this James River granite stock?

A. Yes, sir; he gave that up, and I gave him this agreement. It was not worth anything at all.

Q. What did you do with it?

A. The whole concern was sold out.

Q. To whom?

A. To Lockwood, Farrar and McKilben, I think.

Q. Anybody else?

A. They made a subsequent sale to other parties, but those are the persons I saw.

Q. How did you sell to them; by transferring this stock?

A. By transferring this stock to them.

Q. What did you give them for it?

537 A. An abrogation of an agreement which I spoke of, on which I was to pay them a certain amount of my contract. I considered I was getting rid of an elephant in getting rid of that quarry.

Q. You settled that matter with him by turning over the stock and the quarry too?

A. Yes, sir.

Adjourned to meet at 10 o'clock to-morrow, July 6th, at the same place.

JAS. O. CLEPHANE,
Examiner in Chancery.

538 WASHINGTON, D. C., *July 6th*, 1875.

Commission met pursuant to adjournment. Present, counsel on either side.

Examination of Albert Ordway resumed.

By Mr. WORTHINGTON:

Q. In the business of Andrews, Ordway and Green and the Westham Granite Company, were the accounts of the Western Union contract, the Centennial contract, and the private business kept seperate from the government contract, so that the receipts and disburs'ment on account of the latter can be seperated from the others?

A. Yes, sir; all the receipts and disburs'ments were kept seperate, except for quarrying the stone. The quarrying of the stone was done in a general way, and the receipts and disbursements for a particular job cannot be kept seperate.

Q. Is not getting the stone out of the quarry the principal item of expenditure?

A. No; the cutting costs a great deal more.

Q. But the cutting of the government stone is paid for by the government?

A. Yes, sir; but you asked *if* the Western Union and Centennial contracts. The principal cost there is the cutting.

539 Q. But the principal cost on account of the government stone, not reimbursed by the government, is the expense of getting the stone out of the quarry, is it not?

A. Yes, sir.

Q. That is not kept seperate from the cost of getting the stone out on the other accounts?

A. No, sir.

Q. There is no way of arriving at it?

A. No, sir; there is no way of arriving at it. It would be utterly impossible to keep the cost of the stone used for different purposes seperate.

Cross-examination by Mr. MORRIS:

Q. Give us a brief statement of the circumstances under which your indebtedness to Mr. Shedd arose.

A. In the fall of 1871, my cousin, Frank Ordway, came to Richmond

and said that he could obtain quite an amount of money if I could make any use of it. I had considerable conversation with him in regard to it, showed him how I thought I could make money with it. He indicated to me that his relation with Mr. Shedd was such that he almost had charge of his matters, and that he could arrange anything with him that he chose. He did borrow from him a large amount of money, for which he gave notes in his own name; in his name; in his wife's name; in the name of his firm, and in the name of the Ordway Slate Com-
540 pany, these notes binding them jointly and severally to pay the same.

He turned over to me a portion of the money which he thus obtained with the understanding that the profits arising from it would be divided between us. Some little time after this—I had never seen Mr. Shedd; never had any correspondence with him in any manner or shape in regard to the matter, and knew nothing of what Mr. Frank Ordway had represented to him, or what arrangement had been made for the payment of the interest, or anything connected with it. A short time after that, January, think it was, following, Mr. Frank Ordway got into a great deal of trouble in his business, and his mind became affected, so that he was unable to attend to his business, and I wrote then a letter to Mr. Shedd, which I think is in the testimony filed by the complainant, stating to him that I did not know what arrangement Mr. Frank Ordway had made with him and asked him to give a full statement of it as I desired to put the matter in some shape to secure him, as I had the advantage of most of his money. And he did write to me that, and I wrote to him that the debt was not due, and would not be due for
541 four or five years; that I was one of the joint obligators, and I would make some arrangments to assume it and to put him in a goo condition. St'u'k*e* Frank Ordway's interest out entirely.

(All statements by the witness as to the contents of letters which are not called for, or produced, or their absence accounted for, objected to by counsel for complainant as incompetent.)

WITNESS. The letter to which I allude is in the bill of complaint. Subsequently Mr. Shedd sent an attorney of his to Richmond, who wished to know what arrangement I could make. I told his attorney my condition; that it was then utterly impossible for me to pay any money; that the money was not due; that in fact I was perfectly insolvent, and that if Frank Ordway had obtained this money from Mr. Shedd under any misrepresentation, and Mr. Shedd was a trustee, and the money was not his own, on account of the friendly relation that existed between him and myself in early life, that I was disposed to put Mr. Shedd in a position that would justify him as a trustee in having loaned this money. And I said that the only possibility of my ever paying him back was that I might make profits out of this contract, and if I
542 made any money I would be glad and anxious to pay Mr. Shedd.

The attorney said if that was my desire really that he might put it into shape, so that Mr. Shedd would have something to show for his loan in the shape of security. I told him it was my desire; that if I made any profit or any money, I was very anxious Mr. Shedd should derive payment, and suggested to him to draw up some form of agreement by which I would agree to pay to Mr. Shedd a certain proportion of my profits, if I derived any, as I derived them. I suggested to him that I could afford to turn over ⅔ of them as fast as I made them without waiting for the debt to come due. He accordingly drew up an agreement and submitted it to me. It is the agreement which now exists. I told him that was my proposition in the matter that I made voluntary

and agreed to, and signed the agreement. Mr. Shedd at the time wrote me acknowledging my action in the matter, and how much he appreciated it. Subsequently, he came to Richmond himself and went over my accounts and books and saw the condition I told him I was in was entirely truthful, and had been misrepresented to him by other people. He was perfectly satisfied with what I had done, or attempted to do, and promised to do, and so expressed himself at the time and by
543 subsequent letters.

(Mr. Worthington objects to statements of witness relating to the contents of letters which are not produced.)

WITNESS. The matter went along perfectly smooth; I was able to pay him the interest the first year after making the agreement, but subsequently deriving no profits or income from my contract I was unable to pay him the interest upon it, and having derived no profits or any income from the contract, or from any source, he, of course, has received nothing under the agreement.

By Mr. MORRIS:

Q. Did you pay him the interest the first year?

A. Yes, sir; on my part I kept the agreement fully and faithfully, so far as I had agreed to pay him ⅔ of any profits I derived, as I derived them, and they were divided by the firm. There never having been any profits divided by the firm, and I never having derived any, consequently Mr. Shedd has never been paid any. The matter thus went along without my receiving any profits or his having any, until he saw fit to bring this suit against me, averring I had received profits and not kept my agreement by giving him ⅔ of them.

Q. Was the occasion of Mr. Shedd's visit to you in Richmond the first on which you had seen him since the money was loaned?

544 A. Yes, sir; it was a year after the money was loaned; I never had any communication verbal or written with Mr. Shedd in regard to the obtaining of this money; it was done entirely by Mr. Frank Ordway—I mean as George F. Ordway—and without any knowledge as to what representations or agreements he made.

Q. This agreement between Mr. Shedd and yourself was negotiated wholly by Mr. Shedd's attorney?

A. Yes, sir; Mr. Green, of Boston, and at my suggestion.

Q. Were Mr. Green and Mr. Shedd aware at that time of the existence of your partnership with Andrews and Green?

A. Yes, sir; they were both aware of it and of my agreement with Mr. Washburn; it was fully understood by Mr. Green, the attorney, and I supposed, of course, by his client, that I neither expected and could not receive any profits from the building of the south wing, owing to existing of agreements and copartnerships at the time this agreement was made; that was perfectly well understood by him at the time.

Q. When was the copartnership formed between Andrews, Ordway and Green?

A. I thought it was on the fourth, but I was corrected yesterday by Mr. Worthington, who says it was on the 7th of August, 1871.

545 Q. When was the contract between yourself and Mr. Washburn made?

A. The articles of copartnership were drawn up on the 25th of November, 1871, under agreements that had been previously made in July.

Q. That partnership was recognized by the State Department, was it not?

A. Yes, sir; and the articles of copartnership were signed and approved by Mr. Hamilton Fish, Secretary of State.

(Objected to by Mr. Worthington because, if in writing, the approval should be produced.)

Q. Why were you induced to enter into that contract with Mr. Washburn?

A. When this contract came up, there was a very strong competition for it from all parts of the country—different granite men; it required a great deal of labor and influence in the matter, and there were hostile influences at work against me to prevent my getting it, which could be removed by my association Mr. Washburn with me. The only way in which I could associate him with me was by making him a partner, and it was for the purpose of overcoming these hostile influences and preventing their having any effect in the future, after obtaining the contract, that I entered into the copartnership with Mr. Washburn.

546 Certainly his influence in that direction was worth a division of the profits with him as a partner.

Q. Were you looking that time to getting the contract for the whole building?

A. Yes, sir; I knew that if I once got the building started by taking the south wing, it was a matter of almost absolute certainty having the balance of the building. It would be almost necessary to build the building of the same stone all the way through; I therefore thought I was making a very good business arrangement by admitting him to a participation of the profits on one wing in order that I might secure the balance.

Q. How much money paid to Mr. Washburn under that contract did you receive?

A. Not one cent of it.

Q. Directly or indirectly?

A. Directly or indirectly; he had the power of attorney to draw the money, and drew it, and simply turned over to us what belonged to us.

Q. When Colonel Andrews bought out Mr. Washburn, did you ever receive any of the money derived by Colonel Andrews?

A. No, not one cent; I never received personally one cent from any source connected with it.

Q. When was your contract with the government extended?

A. July, 1874.

547 Q. Have you received any portion of the money paid as discounts to the Baltimore bank, about which you have testified in your testimony in chief?

A. No, sir.

Q. Please tell us why Mr. Washburn was induced to surrender to Andrews, Ordway and Green or to yourself, a portion of his profits for the south wing, and the circumstances attending that matter.

A. When the agreement was entered into for a copartnership between Mr. Washburn and myself, it was supposed under the contract that we would cut the stone at the quarries, which would have given to us and Ordway and Green a very large and profitable business at the quarries in a store to supply such a large number of hands, and would also have made a great difference to Andrew, Ordway and Green in the transportation of their stone from their quarries to the shipping point. If they cut the stone at the quarries and sent it to the shipping point in that shape, the weight to be transported would be at least from one-third to one-half more than it would by transporting the rough stone. When we started to go to work the department indicated to us that it would not

meet with their views to cut the stone at the quarry, but that their opinion was it should be cut near the city of Richmond, where the hands
548 could live in the city, and could thereby get a better class of hands.

While the department had no right to dictate to us in the matter, we thought our interest demanded we should accept their hints. It was in their power to give us annoyance and trouble, or help, just as they chose. Consequently they cut off from us a large source of profit that we had counted on, and we made representations of that to Mr. Washburn; that this change had taken place and the locality of cutting the stone made a very serious difference in our profits. The change also relieved him from a very large expenditure, some 20 or 40 thousand dollars to put up buildings at the quarries for the use of the hands, so that under the change he saved a very large amount of money, and we lost a very large amount of money. It was represented to him therefore that it was fair, just, and equitable that some change should be made in the agreement we had entered into. He saw the justice of the demand, and after considerable discussion it was finally agreed that in consideration of these changes and in consideration that I would undertake the labor of cutting out, instead of his superintending it personally, that he would give up 6 per cent. of the 15 to us as an equivalent for what we had lost and he had gained by this change.

Q. Do you know William E. Nye who has testified in this case?

549 A. I possibly might know him if I should see him.

Q. Please explain the circumstances under which the money was drawn from the Treasury in June, 1875, to which reference has been made in the testimony.

A. Our vouchers had accumulated since the first of January for payment by the government, no appropriation having been available for their payment during that time until a new appropriation was passed by Congress, which was finally made available in June; as soon as it was made available our vouchers were approved, and I went with Mr. Smith, the president of the company, to the disbursing officer to settle and draw them, bearing in mind at the same time the injunction, which, as I understood, was simply an injunction not to draw from the Treasury of the United States. We might get all the checks that we chose if we did not use them, and it was very inconvenient for the disbursing officer to separate a voucher. The voucher, for instance, contains the principal sum and the 15 per cent. The disbursing officer paid the principal sum, reserving the 15 per cent. under the amendment of the injunction. When he came to pay the 15 per cent. he would have no voucher for it. His voucher would have already gone in for
550 payment of the principal. Therefore it would be most inconvenient for the disbursing officer to give a check for the whole voucher. As soon as they were drawn I said to Mr. Smith, "This money must not be drawn from the Treasury. I shall violate that injunction and it will make trouble for me." I said, "Before drawing it from the Treasury you must go and see Messrs. Merrick & Norris, and see what arrangement can be made with regard to it." I remained behind, and he took a carriage and came down to see Mr. Merrick, and he came back and said he had left with him $6,500, the amount of 15 per cent. to be held by him, and the balance of the money was drawn. I took particular pains that the injunction should not be violated by directing him not to draw money from the Treasury without seeing counsel.

Q. Did you communicate to Mr. Andrews or Mr. Green, your partner,

any knowledge of your transaction with Mr. Shedd, prior to the filing of the bill in this case?

A. No, sir.

Q. Was J. Condit Smith in the same predicament?

A. I never communicated with him any facts in connection with it until afterwards. I took it as a matter of personal business which I did not consider affected them at all, and which I would have to
551 fight out and take care of myself.

Q. Was the money advanced by Mr. Smith used in the business of the firm of Andrews, Ordway and Green, or how was it used?

A. In the firm of Andrew, Ordway and Green.

Q. Have you ever made, or caused to be made, any balance-sheet of the affairs of Andrew, Ordway and Green?

A. Yes, sir; constantly in the regular course of business; we make up balance-sheets at regular intervals.

Q. Have you made any final balance-sheet?

A. Yes, sir.

Q. Is that one (handing witness a paper)?

A. Yes, sir; that is the balance sheet of the final closing of the business. It stands the same at the present moment, with the exception of accrued interest upon liabilities.

(Paper introduced in evidence and made a part hereof and marked Exhibit No. .)

(Objected to by counsel for the complainant, because witness has already stated the receipts and expenditures of the firm more fully than they appear upon this trial balance.)

Q. This sheet is dated 20th of August, 1874; did anything occur to change or modify this before the first of January, '75?

A. Nothing whatever; there have been no transactions of the
552 firm of Andrews, Ordway and Green. The liabilities remain the same with accrued interest since that time.

Q. I perceive that the assets of the firm by this sheet consist mainly of $147,000 stock of the Western Granite Company. At what rate is that stock estimated?

A. That is its par value, 1,470 shares.

Q. At $100 a share?

A. Yes, sir.

Q. Do you know anything of its value?

A. It is utterly impossible to assign any value to it. That is the par value; none of it has been sold, nor have I been able to sell any. I will state that it appears on the balance-sheet there is a profit of $54,000. That means if the assets are worth dollar for dollar. In paying the liabilities that exist, there would remain a profit of $54,000, but that amount is contingent entirely upon what amount of these assets it takes to pay the liabilities. That is on the basis of the assets being of their par value and being able to be sold at that value to meet their liabilities, which we have never succeeded in doing so far.

Q. So that if all the debts of the firm were paid, and the stock sold for $147,000, there would be a profit of $54,000?

Examination by Mr. WORTHINGTON:

553 Q. That was the opposition which Mr. Washburn, you say, was to overcome?

A. Mr. Washburne was not employed by me at all. I associated him with me to overcome the objections which were made to me, which were principally political.

Q. By whom were those political objections made?
(Objected to by Mr. Morris.)
A. I could not state from what particular source they came. It was mostly by hearsay I got them; but I understood it was the whole Republican influence of Richmond and that locality who were opposed to me.
Q. How do you know there was such political opposition?
(Objected to by Mr. Morris.)
A. Simply by hearsay. I never saw any documents or anything of the kind. I could feel the influence working against me.
Q. How could you feel it?
(Objected to by Mr. Morris.)
A. By various obstacles I met with one way or another. I was a strong Conservative, and they were very much opposed to me. By my associating a strong Republican with me I silenced it.
Q. Who told you that there was this political opposition? You say you had it from hearsay.
(Objected to by Mr. Morris.)
554 A. I could not positively say; it is just a matter of common notoriety. I speak of it in the sense that men would say, "They say I could not locate it."
Q. Was this political influence against anybody but yourself?
A. No. I was the only person at the time known in the matter.
Q. Who was Mr. Washburn to influence?
(Objected to by Mr. Morris.)
Mr. MORRIS. You need not answer that question unless you choose.
A. I will answer it in this way: that I do not know of any particular person he was to influence.
Q. To whom was your bid presented?
A. To the Supervising Architect of the Treasury Department, and by him to the Secretary of State.
Q. Were other bids presented besides yours?
A. A large number.
Qu. Who had the power to decide which bid should be accepted?
A. The Secretary of State.
Q. Were your communications with reference to this matter directly to the Secretary of State, or through some other person?
A. Through the Supervising Architect.
555 Q. Did the Secretary of State or Supervising Architect at any time inform you that political influence was taken into consideration in deciding which bid should be accepted?
A. No, sir.
Q. Did anybody tell you so except Mr. Washburn?
WITNESS. That political influence would decide the bid?
COUNSEL. Yes.
(Objected to by Mr. Morris.)
A. No, sir.
Q. Did you go to Mr. Mullet or to the Secretary of State, or communicate with him after you had this information to inquire whether it was true or not?
(Objected to by Mr. Morris.)
A. No, sir.
Q. I understand that you first saw Mr. Shedd when you went to Richmond in the winter of 1872 and '73, since you have grown up?
A. Yes, sir.
Q. Was not that visit made in the summer of 1871?

A. Possibly in the summer or in the fall; I am not certain.

Q. I wish you would reflect a moment and see if you cannot fix the date more nearly than you have done.

A. I am very certain I cannot fix it. I have nothing by which
556 to recall it. It was, perhaps, in July, it may be in August. There is nothing by which I can fix the date.

Q. Did Mr. Mullet go to Richmond on several occasions before this contract was entered into and after your bid was made?

A. He went there but once before the contract was made. He made an examination of the quarries.

Q. When was that visit made?

A. In July, I think.

Q. Do you know what time in the month?

A. No, sir.

Q. Where is Mr. Washburn now?

A. I am not certain; he was in Walpole, Mass., the last time I heard from him.

Q. On his way to California?

A. Yes, sir; he told me he proposed to take a trip to California, but whither he has gone or is still in Walpole I have no idea.

Q. I understand that after Mr. Washburn gave up 6 of the 15 per cent. he did not superintend the cutting of the stone any further?

A. No, I superintended it.

Q. After that he had no connection with the business whatever, except to receive his share of the 15 per cent.?

A. That was all; he sold his interest afterwards.

Q. He sold his interest some time after the exchange was made, didn't he?

A. He still collected the money after the 6 per cent. and 9 per
557 cent. was arranged?

A. Yes, and his assignee continued to receive the money after that without rendering any consideration further than he has already rendered.

Q. Was it not Mr. Washburn duty to superintend the cutting of the stone?

A. Yes, sir.

Q. Did he and his assignee continue to perform that duty as long as there was any stone to be cut for that wing?

A. No, I did the work for him after that. With the exception of the selection of hands, which was in his power, I did the actual work upon the yard. He so far controlled it that he selected the hands.

Q. Do you know anything further touching the matter in controversy of interest to either party? If so, please state it.

A. No, sir.

ALBERT ORDWAY.

Sworn and subscribed before me this 6th day of July, A. D. 1875.

JAS. O. CLEPHANE,
Examiner in Chancery.

558 WASHINGTON, D. C., *July 6th*, 1875.

Commission met pursuant to adjournment. Present, A. S. Worthington, esq., counsel for the complainant, and Mr. Morris, of counsel for the defendants.

Counsel for the complainant not desireing to examine any other witness at the present time, counsel for the defendant proceeds with the

examination of R. Snowden Andrews as a witness for the defendant, counsel agreeing that if any further deposition should be taken on behalf of the complainant, either Col. Andrews or Col. Ordway may be recalled.

Deposition of R. Snowden Andrews for defendant.

R. SNOWDEN ANDREWS, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by Mr. MORRIS, counsel for the defendant:

Q. State your residence and occupation.

A. I reside in Baltimore. My occupation at present is that of a contractor, and has been for several years.

Q. Are you a member of the firm of Andrews, Ordway and Green?

559 A. I am, or was. The firm is in liquidation now.

Q. Do you know Mr. Shedd, the complainant in this case?

A. I never heard of him in my life until some time after this suit had been instituted; some considerable time afterwards.

Q. I presume, therefore, you know nothing at all of Mr. Ordway's arrangements with him?

A. None whatever. I never saw Mr. Shedd, or any of them Mr. Ordway referred to in this case, except Col. Albert Ordway.

Q. When was your firm formed?

A. August of 1871.

Q. Prior to the formation of the copartnership who was the owner of the quarries?

A. R. Snowden Andrews and Samuel S. Green.

Q. What is the purpose of the contract?

A. Of forming a partnership?

COUNSEL. Yes.

A. The conducting of the granite business in all of its branches.

Q. But with a view chiefly to what?

A. To carrying out of a contract that was understood was about to be awarded to Col. Albert Ordway. It had been verbally, and it was supposed he would get it, but the papers had not been signed at

560 the time. The partnership articles, however, state all that.

Q. Then, this partnership was formed in contemplation of this between Col. Ordway and the government?

A. Yes, sir.

Q. Now, state whether you and Mr. Green have received out of the profits the money there specified to be paid by Col. Ordway, in addition to putting in the contract.

A. We have never received either the $10,000 in cash, nor have we received any profits, either of us, or any part of the $10,000.

Q. When was the business of the firm virtually concluded?

A. It was virtually concluded in February or March of 1874; of the partnership.

Q. Has the firm ever been formally dissolved?

A. It has been formally dissolved, and notice of it has been published in the Richmond papers.

Q. When?

A. The notice that the firm had been dissolved was published to take effect in February or March, 1874. A notice to any parties who had any outstanding claims to present them.

Q. To whom?

A. They were to be presented to me.

Q. Have the affairs of the firm been settled?

A. No, sir.

561 Q. Are they in the course of settlement?

A. Yes, sir; after a fashion.

Q. Who is settling them?

A. Well, the party who undertook to settle them was Bradley T. Johnson, but he was prevented.

Q. Please state whether the firm made any profits or not during its existence out of its business.

A. They did not; if they did I have never been able to see them.

Q. Will you state why?

A. The main reason is that the cost of getting out the stone far exceeds the price paid for it by the government.

Q. State whether the firm worked regularly for the government since the contract was given; whether the work went regularly on.

A. It did not, although it was understood this thing was to be started early in August. The schedules were not prepared by the Supervising Architect until two or three days prior to Christmas, and then came the intimation from the Supervising Architect that he wished the stone to be cut at or near Richmond. That made a further delay.

Q. Did you have the stone cut at or near Richmond?

562 A. Yes, sir; the property had to be purchased in the vicinity of tide-water, near Richmond, on account of this intimation, or suggestion, or command, whatever it might be called. It was made in the nature of a suggestion, but it was practically a command.

Q. Were you acquainted with Mr. Washburn's contract at the time you went into partnership with Ordway?

A. In all the conversations in reference to making a partnership, or being connected with Col. Ordway, he stated to us that the cutting of the south wing he would derive no profit from; that Mr. Washburn was his partner and would have all the cutting part of the south wing.

Q. Why is it that in the contract between yourself, Ordway, and Green a stipulation is made that no part of the profits of the cutting of the south wing shall belong to the firm?

A. Because it was well understood that the profits of the cutting of the south wing would enure to Mr. Washburn.

Q. What were the circumstances connected with the reduction of the profits payable to Washburn?

563 A. The circumstances connected with that were these: The firm of Andrews, Ordway and Green alone would be entitled to any profits derived from a store to be kept at the quarry, and those profits would necessarily have been large where several hundred workmen were to be employed. And, furthermore, the stone being cut at the quarry, we would have had to transport only cut stone to the point of shipment, to have put them where it was intimated we should put them, they would require us to transport rough stone, making us carry two feet for one; also, Mr. Washburn, as the contractor of the cutting, would have had to have had erected at his cost on our premises buildings that would have cost many thousand dollars, to have boarded four or five hundred workmen and the necessary attendants, and he would have been obliged to run these boarding houses with a certainty there was no profit, and with a very great prospect of loss, from the fact that these men could not afford to pay, being limited to $4.00 or $4.50 a week, and there being no profit in boarding them at that rate; he

would have had to have a boarding-house keeper, and all those appliances, just as they have at Dick's Island, which would have been a source of loss to him, in addition to his having to spend large
564 sums of money in the erection of buildings.

Q. Then I understand you took that substantially off his hands on condition of his relinquishing so much of the profits?

(Objected to by Mr. Worthington as leading.)

A. A new arrangement was made between Col. Ordway and Mr. Washburn, by which he agreed to give $\frac{6}{15}$ of the cutting profit to Andrews, Ordway and Green, through Col. Ordway.

Q. State whether Col. Ordway got any of that himself or whether it went directly to the firm.

A. It went directly to the firm; Col. Ordway did not receive any of that personally.

Q. Did you yourself personally purchase the remaining interest of Mr. Washburn, afterwards?

A. I did some months subsequently.

Q. Was that purchase for yourself, or for the partnership?

A. It was entirely for myself, and paid for by my own personal funds. The firm had nothing to do with it.

Q. Will you please give us an idea of the manner in which the work was conducted for the government, the months during which work
565 was carried on, and the time for which payments were made, &c.?

A. The work was not commenced until January, 1872—10th of January—if my memory serves me right. The work was carried on from January, 1872, for about two years. The appropriation was ex'austed. It was a long session of Congress and no new appropriation was made until the last days of the session, being the last days of June, or the first few days of July, 1874. So that there was an interruption in the work for some five or six months. The expenses, however, going on, so far as the quarry was concerned.

A. How do you explain that the work was carried on at a loss?

A. The uncertainty when the work would be resumed did not enable us to discharge many of our employees. They had to be kept under pay. It was the same case with our animals, and the going on of the work necessarily, so far as we could in the quarry of shipping so as to be ready at a day's notice to resume work. The government, during all this retained the lease on our premises. We could not turn off and devote ourselves exclusively to private work, if they continued to hold this lease over us.

Q. State whether in the progress of the affairs of your firm you had occasion to borrow any money to aid you?

566 A. We had continually to borrow money.

Q. Where did you get it mainly?

A. Mainly in Baltimore.

Q. State how the money was obtained usually?

A. In the first place one large loan was obtained by the mortgage of the entire property; $30,000 was obtained in that way.

Q. From whom was that?

A. That was from the Johnsons.

Q. Is there a note given by the firm?

A. Yes, sir.

Q. Did they require any endorsement on that note besides the mortgage?

A. Yes, sir. They were unwilling to do it, stating they did not know

anything about Virginia property, and so on. He would not loan money on that as a security. They required the personal endorsement R. S. Andrews, and required the personal endorsement of Mrs. Andrews, my wife, who has a seperate estate from myself.

Q. Were there any other loans obtained?

A. Yes, sir; continually; loans were obtained from different sources and different parties. Loans were obtained from an uncle of mine; loans were obtained from different banks & bankers, they requiring the same thing, the endorsement of Mrs. Andrews. Money was obtained from the Browns. A large sum of money was obtained from Mr. O'Conner, president of one of the national banks.

567 Q. How much of those loans is yet outstanding & unpaid?

A. About $36,000, which has been paid since the first of this present January.

Q. Has been paid?

A. Yes, sir. By the endorsee of the paper. The endorsers of the paper.

Q. Then it is not paid by the company, but paid by the endorsers & yet held against the firm?

A. Yes, sir.

Q. Which member of the firm generally negotiated those loans?

A. Generally those loans were negotiated by myself. The loan with the bank in Baltimore, O'Conner's bank, was negotiated by Col. Ordway.

Q. What charges, if any, did you ever make for your services in negotiating those loans?

A. Just what the company had to pay; there were no charges whatever.

WITNESS. Do you mean as a broker?

COUNSEL. Yes; did you make any charges yourself at all?

A. No, sir.

568 Q. State what interest, if any, you had in any of the banks or bankers with whom you negotiated these loans, in their business?

A. I never owned a share of bank stock, or had any interest in banks with the bankers or brokers in my life, directly or indirectly.

Q. Why is it that some of the discounts shown to have been paid were so large?

A. Because of the nature of the security in the first place, and secondly, the condition of the money market.

Q. What interest was allowed in Virginia recently?

A. The interest allowed in Virginia at the present time is 8 per cent. That, however, is comparatively of recent date. The interest was 12 per cent. up to a very short period of time just passed.

Q. How much, if any, of the money obtained by Colonel Ordway from Mr. Shedd went into the business of the firm of Andrews, Ordway & Green?

(Objected to by Mr. Worthington, because it does not appear that the witness knows what disposition was made of Mr. Shedd's money to Col. Ordway.)

A. Not one dollar.

Q. Did Col. Ordway himself advance any money to the firm?

A. Not a dollar.

569 Q. What became of the money advanced by Mr. J. Condit Smith to the firm?

A. It was used in paying the liabilities of the firm.

Q. State the circumstances of the drawing of the money from the Treasury, on or about the first day of June last.

A. J. Condit Smith, Col. Ordway, and myself went to the disbursing agent's office and the vouchers were receipted and checks were given to Col. Albert Ordway, who immediately thereupon endorsed them to J. Condit Smith. We proceeded then down to the office of Messrs. Merrick & Morris; stated to Mr. Merrick that in order to draw this portion of the money, which had been released by the court from the injunction, that it was necessary to draw from the disbursing agent on one set of the vouchers and wished to know of him what disposition it was best to make of the 15 per cent., the checks not yet having been presented to the Treasurer. He stated that the proper course would be to place the money in the hands of Riggs & Co., and bring him a certificate of deposit. He entered into a calculation with us—I refer now to Mr. Merrick—and having ascertained what the total 15 per cent. was, suggested, in order that there might be no question, that we had better leave the $6,500 in Riggs' hands and bring him the certificate of deposit,
570 which was a little more than the entire 15 per cent. That was done, and the certificate of deposit was brought and handed to Mr. Merrick, who stated that he would immediately inform the court that he had that fund in his hands as an officer of the court, which I presume he did.

Cross-examination by Mr. WORTHINGTON:

Q. You say that Mr. Johnson, the referee, has been prevented from making a division of the assetts of the firm. What has prevented him?

A. His own sense of honor.

Q. In what way?

A. Very shortly after the matter was placed in his hands to arbitrate Col. Ordway borrowed from him a certain number of Virginia bonds for a short period of time. He awaited the arrival of the date for payment so as to close up all pecuniary relations between Col. Ordway and himself before acting in the award. When the period of time came, however, when he was to have been repaid by Col. Ordway, Col. Ordway was not able to repay him, and has not done so as yet. He then sought to await the sale of the property—of Col. Ordway's house, to see whether that would bring him out so as to close their pecuniary relations.

571 Q. Has the house been sold?

A. It has recently been sold.

Q. Is there any prospect that Bradley T. Johnson will be paid out of the proceeds, to your knowledge?

A. I have no personal knowledge, but from what I have heard I think it will still leave Col. Ordway indebted to him some $3,000.

Q. You state as the reason why no profits have been made that the cost of getting out the stone exceeds the price paid for it by the government. Have you kept any account of the expenditures and receipts in this matter other than that which appears upon the books produced here by Col. Ordway?

A. No, sir.

Q. Your judgment on that matter then, is made up from the accounts kept in these books?

WITNESS. My judgment whether there is a profit at that price on the stock?

COUNSEL. Yes.

A. No, sir; it is not made up from that.

Q. From what is it made up?

A. From a knowledge of the cost of getting quarry stone, and from a knowledge of the price paid by the government for stone of that size and character.

572 Q. What is the average cost per cubit foot of getting out stone such as this?

A. If you will answer that, or any other man in the United States, I will give him a check for $5,000. If any man in the United States will answer it so as to make a demonstration of it I will willingly give him a check for that amount. It has never yet been ascertained from any quarryman from the beginning of the world, except by the results at the end of transactions, and no two transactions are alike.

Q. That is precisely what I supposed. Now I want to know how you arrived at the results at the end of this business, if not from these books?

A. I know that the average pay of 90 cents for stone of the average size that has been furnished by the government is about one-half of what its value is.

Q. I understood you to say just now that nobody from the beginning of the world could arrive at such a conclusion as that, except by the results at the end of the business?

A. The conclusion in this particular case I have arrived at from the results at the end. We quarried so many thousand feet, and we

573 got so much money for it, and further than that from my general knowledge of the business. My business has been of a mechanical nature all my life, as an architect, and I know the value of materials, and the value of producing them under different circumstances.

Q. The government granite has been taken from the same quarry as that of the Western Union contract and the Centennial contract granite?

A. Partially.

Q. Have the same men been employed in getting out the granite under the different contracts?

A. Yes, sir; necses'arily have to be in a quarry. Sometime' you have got ten men for five minutes at this point, and ten minutes afterwards all those men are engaged upon another point of the same quarry. It is impossible to work a quarry and keep the costs which appertain to a particular job seperate the one from the other.

Q. Then it is impossible for anybody to say what has been the cost of getting out the granite supplied to the government under this contract?

A. With precision, except to known results. It is *is* impossible to say that stone costs so many cents per cubit foot, but it is not only

574 possible but very easy to know that it costs a great deal more than the price the government paid for it.

Q. Have you any *any* acquaintance with these books which have been produced here by Col. Ordway?

A. The word "acquaintance" in reference to books it is difficult for me to define. The books were not kept by me. I have had access to them.

Q. Do you believe them to be a correct account of your business?

A. As far as I have knowledge they are a correct account of our business.

Q. And an account of your disbursements and receipts taken from them would show the correct results of your business?

A. So far as I have any knowledge.

Q. About this agreement with Washburn, did Col. Ordway tell you why he entered into it?

A. No, sir.

Q. Did you ask him why?

A. No, sir.

Q. Did you know Mr. Washburn?

A. I never saw him for several months after the contract. The partnership had been made.

575 Q. Did you hear anything at or about the time the contract was entered into about the political influence to which Col. Ordway referred to-day in your presence?

A. No, sir. I was a bidder against Col. Ordway in this very work. In a bid put in in the name of Wiley & Co., I was the "company" for this job.

Q. You opposed Col. Ordway in getting the contract?

A. No, sir; I did not. I put a bid in to try to get it for myself. I did not oppose anybody. I saw mine was not the lowest bid. Then I knew the fact that if that stone had to come from Virginia I had the only quarry that could produce it.

Q. You speak of yourself. Did Mr. Green have some interest in this matter?

A. Yes, sir. He was my copartner in this matter.

Q. Is Mr. Green a capitalist, or a practical quarryman?

A. A practical quarryman, and not a capitalist.

Q. You were the moneyed man of the business?

A. I had some little money, and have some now.

Q. If I understand you, you had and have no knowledge from any source as to the political influence of which Col. Ordway has been speaking?

A. Of my own knowledge I know nothing about it.

576 Q. Do you know anything of it from what Col. Ordway has told you at any time?

A. I do not. He has never mentioned the subject to me. I never have asked him. It was none of my business.

Q. Did he ever talk on the subject in your presence?

A. Never.

Q. During the suspension of work, from January to July, '74, how many hands were retained at the quarry under pay?

A. I cannot give you the number of hands. I can tell you what the pay-rolls of those hands amounted to pretty closely.

Q. State that.

A. The pay-rolls amounted to from $3,500 down to $2,500 a month.

Q. Were those men idle during the time?

A. No, sir; we do not generally keep men idle about us, if we know it.

Q. Then what were they doing?

A. Doing the most they could to keep the work in a condition so as to be able to on with it as soon as the appropriation should be made.

Q. Now what did you find for $6,500 worth of hands to do in one month in keeping the quarry ready for resuming work?

577 A. There was certain stripping, certain blasting, certain preparing, and working of all kinds incident to quarrying, and feeding the animals.

Q. What do you mean by stripping?

A. "Stripping" means taking off worthless material from the top of the stone; sinking down the points of the quarry so as to try the stone as to its nature and character.

Q. That is all work that would have to be done on resuming work is it not?

A. Yes, sir; but you could be quarrying work out if you knew what

stone you had to quarry out at the same period of time with this; but if you did not know what size these stone were to be, not having any schedule, you are afraid to blast out your stone, for fear, when you have done it, you have done just what you did not want to do, and you are therefore working at a terrible loss.

Q. You did a great deal of stripping during that month for subsequent work, didn't you?

A. Certainly; we did stripping and all other work appertaining to the quarry: we had to go in debt for it.

Q. On the first of January, 1875, how much stripping had been done of granite to be taken out thereafter? You may state either the
578 quantity of earth and worthless material that had been removed, or the amount of money that had been spent in doing it.

A. We had a great deal of stone unquarried, and the stripping is not done; it is going on all the time as you are preparing for work. No man can answer the question except by the pay-rolls which, the books will show. Nobody can say how much stripping is done in a quarry. I have been a practical mechanic all my life and could not answer it, and I do not believe any one else could.

Q. Can you form any idea, being a practical mechanic of such long experience, what it would cost per cubic yard to remove this worthless material from the top of the granite?

A. If you will tell me the class of material that you are going to use I will come pretty close to it, but as in a quarry there are twenty different characters of material to be removed, each one of which requires something different. If it is merely earth it is somewhere from about 20 to 30 cents per cubic yard. If it gets into another class of loose rock it is from 40 to 80 cents. If it is hard rock, and yet valueless by reason of streaks, and so on, it will go considerably above a dollar a yard, and all and each of these are in there in different quantities.

579 Q. What was the average cost per cubic yard of removing the different kinds of material from that particular quarry; I refer to the material that had been removed on the 1st of January, '75, from granite not yet taken out?

A. I shall have to refer to the books in regard to that. It is not usual to isolate an item and keep it in that way. The books show what the pay-rolls have been each month.

Q. Do the books show what hands were employed in the stripping, and what hands were employed in quarrying, and how much was paid on each separate account?

A. No, sir.

Q. Then we cannot get at this information from the books, can we?

A. You cannot get at it all. I could not get at it, and I am pretty sure Mr. Green could not, who does nothing but stand there all day. If you were familiar with the workings of a quarry, you would see your question was an unanswerable one.

Q. I thought the answer would be difficult, but interrogating a gentleman who seems to know so much about the business, I thought perhaps I could obtain some information. It is certain, however, a large amount of money had been expended prior to the 1st of January,
580 1875, in stripping granite that was to be taken out thereafter. Is not that so?

A. In every quarry, at all periods of time when we commenced this contract, a large amount of stripping, of course, had to be done. It would not have been in a condition to have gone on with the work, so that at each step, during the progress of this work, you have got to

have your stripping ahead of you; have got to commence with it ahead of you, and keep it ahead of you at all periods of time. If you do not, you cannot quarry.

Q. Have you employed counsel to defend this case?

WITNESS. Which case?

COUNSEL. This case of Shedd against Ordway.

(Question objected to by Mr. Morris.)

A. Col. Ordway employed Messers. Merrick & Morris, and as my business has been interrupted by this endeavor to obtain money from people who did not owe money, I necessarily have come to the same counsel to see when this interruption of our business by outside people was going to cease, and I presume gentlemen of the legal profession do not bother themselves attending to business without expecting to be paid for it.

581 Q. Are you deeply interested in the result of this case, are you not?

A. I am deeply interested to have outside parties stop interfering with my business, which they are doing to a serious extent, in endeavoring to obtain money from me which I never have owed and do not owe.

Q. Do you know anything further concerning the matter in controversy of interest to either party? If so, please state it.

A. No, sir.

R. SNOWDEN ANDREWS.

Sworn and subscribed to before me this 6th day of July, 1875.

JAS. O. CLEPHANE,
Examiner.

WASHINGTON, D. C., *Oct. 30th*, 1875.

Commission met by consent of counsel. Present, A. S. Worthington, esq., counsel for the complainant.

Neither witnesses nor counsel for the defendant appearing, the commission adjourned until Monday, November 1st, 1875, 3 p. m.

JAS. O. CLEPHANE,
Examiner in Chancery.

582 WASHINGTON, D. C., *November 1st*, 1875.

Commission met pursuant to adjournment. Present, A. W. Worthington, esq., counsel for the complainant.

Deposition of A. B. Mullett for complainant. (*Taken by consent.*)

A. B. MULLETT, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by Mr. WORTHINGTON:

Q. Please state your residence and occupation.

A. I reside in Washington, D. C., and am at present vice-president of the Chrome Steel Company of Brooklyn, New York.

Q. What was your position in the summer and fall of 1872?

A. I was Supervising Architect of the Treasury Department; acting also as architect of the new State Department building.

583 Q. Please state what were your duties in connection with the awarding of the contract for the new State Department building in 1872.

A. My duties were to advertise, under the general direction of the Secretary of State, and in accordance with the requirements of law, for the granite for the State Department; to receive bids, examine the different materials submitted, the quarries from which they were taken, and transmit the bids together with my recommendations to the Secretary of State.

Q. Did you have any connection with the matter after transmitting the papers to the Secretary of State?

A. I had some conferences with the Secretary in regard to it, at which time I repeated the recommendations I had put in writing, and possibly gave him reasons for it, which were, perhaps, not on record, but such were merely explanatory. I am not aware that I said anything that was not a matter of record, but I might have.

Q. What were the considerations that induced the awarding of the contract to Albert Ordway?

A. They were fully set forth in the report before alluded to, which I made to the Secretary of State. Speaking from memory, I can
584 only say that Ordway's bid, and the bid of the Boddwell Granite Company were the two lowest bids; I cannot at this period of time remember whether there was any actual difference between them, or what it was, but the granite of the Boddwell Granite Company was a crystaline granite, inclining to a sienite, which was preferable to the plain work of the basement, but not so well adapted for the superstructure as Col. Ordway's. I therefore considered Colonel Ordway's the cheapest granite for the superstructure, as well as the most suitable.

Q. Was it known at the time what were Col. Ordway's politics?

A. I do not remember that I knew anything about it; at any rate it had nothing to do with the subject and did not enter into the award of the contract one way or the other. I knew Col. Ordway was a northern man; had done good service in the war, and I certainly had no feeling against him. On the contrary, my preference was for him as a man, if I had any. I never met him, as far as my memory goes, until I met him in connection with his bid, when he made a very favorable im-
585 pression upon me, and I have seen nothing to change my opinion of him to the present time.

Q. Did you know one Andrew Washburn at that time?

A. I think I did not know Mr. Washburn at that time. I did not know him in connection with this business at any rate. I might have known him and I might not. I knew a great many people. I did not know who he was except that he lived at Richmond.

Q. What, if anything, did he have to do with the awarding of the contract to Ordway?

A. Nothing at all.

A. B. MULLETT.

Sworn and subscribed to before me this 1st day of November, 1875.

JAS. O. CLEPHANE,
Examiner in Chancery.

It is agreed this 9th day of November, A. D. 1875, that the foregoing deposition of A. B. Mullett shall be considered as having been taken under the order of the court extending the time for taking his testimony.

STANTON & WORTHINGTON,
Solicitors for Complainant.
MERRICK & MORRIS,
Sol. for Defendant.

586 *Commissioner's return.*

DISTRICT OF COLUMBIA,
Washington, D. C., ss:

The foregoing depositions of the within named witnesses were duly taken by and before me, on the 26th, 27th, 28th, and 29th days of May, 1875, and the 3rd, 5th, 9th, and 11th days of June, 1875, and the 3rd, 5th, and 6th days of July, 1875, and 30th day of October, 1875, and 1st day of Nov., '75, at Richmond, Virginia, and Washington, D. C., in the presence of the persons and parties named in the caption of said deposition. The said witnesses were first, and before any questions were put to them, properly and duly sworn by me to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and the answers and the testimony of the said witnesses were taken down by me and read over by me to them, and by them signed in my presence.

JAS. O. CLEPHANE,
Examiner in Chancery.

587 *Order overruling motion to suppress depositions; and final decree.—Filed Nov. 24th, 1875.*

In the supreme court of the District of Columbia.

ROBERT G. SHEDD
vs
ALBERT ORDWAY. } No. 4092.

This cause coming on to be heard on defendant's motion to suppress depositions, and for final hearing upon the pleadings and proofs, upon consideration thereof, and after argument by the counsel for the complainant and the defendant, it is, this 24th day of November, 1875, ordered that said motion be overruled, and it is adjudged, declared, and decreed that the defendant, Albert Ordway, is indebted to the complainant in the sum of thirty-eight thousand five hundred dollars, with interest at seven per cent. per annum from the 1st day of April, 1873, and costs of suit; and that the complainant is entitled to receive, on account of said indebtedness, the moneys now held by Richard T. Merrick, the receiver in this case, and three-eighths of the moneys which shall hereafter accrue or become due to the defendant from the Government of the United States on account of the fifteen per centum of the full cost of the labor, tools, shops, sheds and materials necessary to cut, dress and box at the quarry or quarries all the granite to be furnished under the defendant's contract with the United States in the proceedings mentioned, dated November 16, 1871, until said indebtedness shall have been fully satisfied therefrom.

And it is ordered, adjudged, and decreed that the complainant shall have execution as at law against the defendant for said sum of thirty-eight thousand five hundred dollars and interest, and that said Richard T. Merrick, receiver, shall pay to the complainant or his solicitors the moneys now in his hands; and that John Selden be and he here-
588 by is appointed a receiver to collect from the United States the whole amount of said fifteen per centum as the same shall become due hereafter, and directed to collect the same and to pay five-eighths of the same as he collects it to the defendant, and the remainder to the complainant until the indebtedness aforesaid shall be extinguished.

Said John Selden, before entering upon his duties as receiver, shall

file in court his bond to the United States, with sureties satisfactory to the court, in the penal sum of forty thousand dollars, conditioned for the faithful performance of his duties as such receiver.

It is further ordered, adjudged, and decreed that the defendant and his agents, attorneys and assigns be and they hereby are perpetually enjoined from collecting or attempting to collect from the United States said fifteen per centum or any part thereof, so as aforesaid to be collected by said receiver, and from interfering with said receiver in the performance of his duties aforesaid. And leave is given to the complainant to apply at the foot of this decree for any further order necessary to carry the same into full effect.

From this decree the defendant appeals to the court in general term.

By the court.

A. W.

589 *Receiver Selden's bond.—Filed Dec.* 1, 1875.

Know all men by these presents that we, John Selden, of the city of Washington and District of Columbia, as principal, and George W. Riggs, of the same city and District, as surety, are held and firmly bound unto the United States of America in the full and just sum of forty thousand dollars, in lawful money of the United States, for payment whereof well and truly to be made we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, by these presents, sealed with our seals, and dated this thirtieth day of November, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas the above bounden John Selden, under and by virtue of a certain decree passed by the supreme court of the District of Columbia, in a certain cause therein depending, wherein Robert G. Shedd is complainant and Albert Ordway defendant, numbered, in equity, No. 4092, was lately, to wit, on the 24th day of November, 1875, appointed receiver in said cause, for the objects and purposes in and by the said decree expressed:

Now, therefore, the condition of the above obligation is such that if the said John Selden shall well and faithfully perform the trust in him reposed by the said decree, or which may be to him confided by any further or other order lawfully passed in the said cause, then the above obligation to be void and of none effect, or else to be and remain in full force and virtue.

JOHN SELDEN. [SEAL.]
GEO. W. RIGGS. [SEAL.]

Witness:
CHAS. C. GLOVER.

Approved this 1st day of December, A. D. 1875.
D. K. CARTTER, *Ch'f Just.*

590 *Agreement for modification of decree and bond, &c.—Filed Dec.* 9, 1875.

In the supreme court of the District of Columbia, the day of December, A. D. 1875.

ROBERT G. SHEDD, COMPLAINANT,
vs.
ALBERT ORDWAY. } No. 4092. Equity.

It is agreed between the parties to this cause by their respective solicitors—

1. That the decree entered in said cause on the 24th day of November,

A. D. 1875, shall be so modified that the defendant, Albert Ordway, his agents, attorneys, and assigns, shall be permitted and authorized to collect and receive from the proper officer of the United States five-eighths (5-8) of the fifteen per centum specified in said decree, the remaining three-eighths (3-8) of said fifteen per centum to be collected by the receiver appointed under said decree, and the proper voucher for the whole sum to be given to the United States by the said defendant.

2. That the supersedeas bond to be given by the defendant, in pursuance of his appeal to the general term from the said decree and from the same as herein proposed to be modified, shall be in the form set forth under the second paragraph of the 91st of the general rules of the court, with the following proviso added thereunto, to wit: "Provided, that in no event shall the liability of said sureties, as sureties on this bond, exceed such portion of three-eighths (3-8) of the fifteen per cent. in the decree mentioned as has been or hereafter may be collected by the receivers in the cause, and as may hereafter be paid or collected by the defendant Ordway, his attorneys, agents, or assigns."

591 3. That, upon the filing of such bond by the defendant, the receiver shall then be authorized to invest such funds as he shall from time to time receive in United States securities.

4. That the moneys in the hands of R. T. Merrick, receiver, shall be paid over to John Selden, receiver, after deducting therefrom reasonable and proper fees as receiver, and shall be invested in the same manner as hereinbefore provided in reference to the residue of the funds that may come into the hands of said John Selden, receiver.

December 9th, 1875.

STANTON & WORTHINGTON,
Solicitors for Complainant.
MERRICK & MORRIS,
Solicitors for Defendant.

Decree modifying former decree.—Filed Dec. 13, 1875.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD *vs.* ALBERT ORDWAY. } No. 4092. Eq. doc. 14.

Upon motion of solicitors for the complainant, and after consideration of the stipulation filed this day, signed by the solicitors for the complainant and defendant respectively, it is this thirteenth day of December, 1875, ordered, adjudged, and decreed that the decree entered in this case on the 24th day of November, 1875, be, and the same hereby is, so modified that the defendant, Albert Ordway, his agents, attorneys, and assigns, are permitted and authorized to collect and receive from the United States five-eighths (5-8) of the fifteen (15) per centum specified in said decree, the remaining three-eighths (3-8) of said fifteen

592 per centum to be collected by the receiver appointed by said decree; and that the defendant, Albert Ordway, be, and he hereby is, required and directed, when such proportional payments are made, to give the proper voucher for the whole sum to the United States for the proportion paid to the receiver as well as for the proportion paid to himself, his agents, attorneys, or assigns.

And it is further ordered that Richard T. Merrick, esq., the former receiver in this case, be, and he hereby is, instructed to pay over to John

Selden, esq., the present receiver, the money in his hands after deducting therefrom five per cent. of the whole as compensation for his services as such receiver, and to report his doings to the court.

And it is further ordered that the present receiver be, and he hereby is, authorized to invest in United States securities such funds as he may now have or may hereafter receive, and to place such funds or securities for safe-keeping with Riggs & Company.

By the court.

A. W.

Appeal bond.—Filed Dec. 13, 1875.

In the supreme court of the District of Columbia, the day of December, A. D. 1875.

ROBERT G. SHEDD, COMPLAINANT,
vs.
ALBERT ORDWAY, DEFENDANT. } No. 4092. Equity.

The defendant, Albert Ordway, having appealed to the general term from the decree pronounced against him in the special term on the 24th day of November, A. D. 1875, as modified by the decree entered in the same cause against him on the 13th day of December, A. D. 1875, and
593 John Condit Smith and Richard Snowden Andrews, his sureties, for themselves and each of them, their and each of their heirs, executors, and administrators, appearing and submitting to the jurisdiction of said general term, hereby undertake to abide by, perform, and pay its decree, which they agree may be pronounced against each and all of them: Provided, that in no event shall the liability of said sureties, as sureties on this bond, exceed such portion of the three-eighths (3-8) of the fifteen per cent. in the decree mentioned as has been or hereafter may be collected by the receivers in this cause, and as hereafter may be paid to or collected by the defendant, his attorneys, agents, or assigns.

JOHN CONDIT SMITH.
RICHARD SNOWDEN ANDREWS.
ALBERT ORDWAY.

Witness:
G. E. HAMILTON.

Approved.

A. WYLIE.

Report of R. T. Merrick, receiver.—Filed Dec. 14, 1875.

In the supreme court of the District of Columbia, the 14th day of December, A. D. 1875.

ROBERT G. SHEDD, COMPLAINANT,
vs.
ALBERT ORDWAY, DEFENDANT. } No. 4092. Equity.

Richard T. Merrick, heretofore appointed receiver in the above-entitled cause, respectfully reports that in pursuance of the trust reposed in him by his appointment as such receiver, he collected and received from the Government of the United States, through the defendant and his assigns, on the 8th day of July, A. D. 1875, three thousand three hundred and fifty dollars ($3,350); on the 15th day of October, A. D. 1875, two thousand seven hundred dollars ($2,700); and on the 12th day of November, A. D. 1875, one thousand six hundred and one dollars and forty-seven
594 cents ($1,601.47); or in all, the sum of seven thousand six hundred and fifty-one dollars and forty-seven cents ($7,651.47); and that

this is the whole amount of collections made by him in the premises as such receiver.

And he further reports that this amount so collected was on account of the three-eighths of fifteen per centum mentioned in the proceedings in the above-entitled cause as payable under certain contracts therein referred to and specified, and he believes that this amount was the whole of the three-eighths of the fifteen per centum referred to, which accrued due and was paid by the Government of the United States on account of the contract between it and the defendant, Albert Ordway, referred to in these proceedings, during the period from the appointment of the undersigned as receiver aforesaid, to the time of the final decree rendered by the special term of this court in said cause.

And he further reports that, as he collected the said sums, he forthwith deposited the same with Messrs. Riggs & Company, and received certificates of deposit therefor numbered 530, 580, & 592 respectively.

He further reports that on the day of December, A. D. 1875, in accordance with the order and decree of this court, he transferred and paid over to John Selden, esq., receiver, appointed in and by the final decree aforesaid, out of the amount so collected by the undersigned, the sum of seven thousand two hundred and sixty-eight dollars and ninety cents ($7,268.90), and took his receipt therefor in duplicate, one copy whereof is hereunto annexed, retaining for himself three hundred and eighty-two dollars and fifty-seven cents ($382.57) as compensation for his services as receiver, being five per centum of the amount so as aforesaid collected in accordance with the agreement of the parties hereto
595 by their respective solicitors embodied in the order of this court rendered on the 13th day of November, A. D. 1875.

R. T. MERRICK.

Subscribed and sworn to before me this 14th day of December, A. D. 1875.

[NOTARIAL SEAL.] J. F. RILEY,
Notary Public.

Receipt of John Selden, receiver.

(Duplicate.)

WASHINGTON, D. C., *Dec. 14th*, 1875.

Received this day of R. T. Merrick, receiver in the case of Shedd vs. Ordway, No. 4092, equity, seven thousand two hundred and sixty-eight dollars and ninety cents ($7,268.90), being balance of $7,651.47 collected by him from the United States Government as receiver in the said cause, after deducting five per cent. thereof, equal to $382.57, for his services as such receiver.

JOHN SELDEN, *Receiver.*

596 *Examiner Clephane's receipt.—Filed Dec. 23, 1875.*

SHEDD *vs.* ORDWAY. } Equity.

Will Mr. Meigs please enter up $189 as having been paid by counsel for pl'tf'ff for testimony for pl'tf'f in above-entitled cause?

Truly,

J. O. CLEPHANE.

597 *Motion by compl't to dismiss appeal.—Filed Jan.* 17, 1876.

In the supreme court of the District of Columbia, in general term, this 13th day of January, 1876.

ROBERT G. SHEDD
v.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

The complainant moves the court to dismiss the appeal taken by the defendant in this case.

STANTON AND WORTHINGTON,
Att'ys for Complainant.

The ground of this motion is that the defendant has not complied with the 92nd rule of court. Please take notice that we will call it up on Monday, the 17th day of January, 1876, at the opening of the court or as soon thereafter as counsel can be heard.

STANTON AND WORTHINGTON,
Att'ys for Complainant.

To Messrs. MERRICK & MORRIS,
Att'ys for Def't.

Service acknowledged this 14th day of January, 1876.
MERRICK AND MORRIS.

598 *Argument & submission.*—1876, *May* 23.

SHEDD, ROBERT G.
v.
ORDWAY, ALBERT. } 4092. Eq. doc., 14, Cal. No. 34.

After argument by Mr. Worthington and Mr. Stanton behalf of complainant appellee, and by Mr. Merrick behalf of defendant appellant, the cause is submitted.

599 *Motion to make Jno. T. Goddard, adm'r, party compl't.—Filed Dec.* 18, 1876.

In the supreme court of the District of Columbia. In general term.

ROBERT G. SHEDD
v.
ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

Counsel for complainant suggest his death, and file hereto subjoined duly certified copy of the appointment of John T. Goddard as his administrator. And as solicitors for said administrator they move that he be made party complainant in this action.

STANTON AND WORTHINGTON,
Solicitors for Shedd and for his Administrator.

Letters of administration to Jno. T. Goddard.—Filed Dec. 18, 1876.

Probate court.

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

600 I, Joseph H. Tyler, register of the probate court for the said county of Middlesex, hereby certify that at a probate court holden in and for said county on the tenth day of October, in the year of our Lord one thousand eight hundred and seventy-six, John T. Goddard, of the city, county, and State of New York, was duly appointed administrator of the estate of Robert G. Shedd, late of Groton, in said county of Middlesex, deceased, intestate, and gave bond to the acceptance of the judge of said court for the due performance of said trust according to law.

I also certify that it appears by the records and files of said court that said appointment remains in full force.

In witness whereof I have hereunto set my hand and the seal
601 of said court this nineteenth day of October, in the year of our Lord one thousand eight hundred and seventy-six.

PROBATE COURT, MIDDLESEX COUNTY, MASSACHUSETTS. JOSEPH H. TYLER, *Register.*

Order making Jno. T. Goddard party compl't.—Filed Dec. 18, 1876.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD *v.* ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

The death of complainant being suggested in open court, and it appearing to the court that John T. Goddard has been duly appointed his administrator, and the defendant appearing by his counsel and consenting hereto, upon the motion of Messrs. Stanton and Worthington, solicitors for said administrater, it is this 18th day of December, A. D. 1876, ordered that said John T. Goddard, as administrater as aforesaid, be and he is hereby made party complainant in this action.

By the court.

A. W.

I consent.

602 *Decree in gen'l term affirming decree below.—Filed Dec.* 18, 1876.

Proceedings before the supreme court of the District of Columbia.
General term.

MONDAY, *Dec.* 18, 1876.

Present, Justices Olin, Wylie, Humphreys, and MacArthur.

In the supreme court of the District of Columbia. In general term.

JOHN T. GODDARD, ADMINISTRATOR OF THE estate of Robert G. Shedd, deceased, *v.* ALBERT ORDWAY. } No. 4092. Eq. doc., 14.

This cause coming on to be heard at this term, and having been ar-

gued by the counsel for both parties, upon consideration thereof it is this 18th day of December, A. D. 1876, ordered, adjudged, and decreed that the decree made by this court in special term on the 24th
603 day of November, A. D. 1875, be and the same is hereby in all things affirmed. From this decree the defendant in open court prays an appeal to the Supreme Court of the United States, and it is allowed.

By the court.

A. W.

Notice of motion for reargument.—Filed Dec. 26th, 1876.

In the supreme court of the District of Columbia.

SHEDD *v.* ORDWAY. } No. 4092. Equity.

Messrs. STANTON and WORTHINGTON.
Att'ys and Solicitors for Complainant:

GENTLEMEN: You are hereby notified that at the opening of court in general term on Tuesday next, the 26th inst., I shall move that
604 the order affirming the decree in the above-entitled cause be set aside and the case reargued, on the ground that a motion for reargument heretofore made in open court had never been brought up in consultation or determined by the court at the time of making said order of affirmance, and that said order of affirmance ought not to have been made in the premises, but was irregularly and inconsiderately pronounced and entered.

R. T. MERRICK,
Att'y and Sol. for Defendant.

DEC. 22ND, 1876.

Service admitted this 22nd day of Dec., 1876.
STANTON AND WORTHINGTON,
Solicitors for Complainant.

605 *Appeal withdrawn.—Filed Dec. 30, 1876.*

TUESDAY, *December* 30, 1876.

Session resumed pursuant to adjournment. Present justices Olin, Wylie and MacArthur.

SHEDD *vs.* ORDWAY. } No. 4092.

The appeal taken in the above entitled cause is withdrawn by order of def't counsel.

R. T. MERRICK,
For Def't.

Motion to vacate judg't & for reargument.—Filed Dec. 30, 1876.

General term.

SHEDD *vs.* ORDWAY. } No. 4092.

And now comes the defendant, and by his counsel, R. T. Merrick,

moves the court to vacate the judgment of affirmance heretofore made in the above entitled cause, and for leave to argue the same before a full bench; and assigns as reasons therefor, in addition to the rea-
606 sons heretofore filed, that said cause was heard before only three of the justices, and that the said judgment was rendered by only two of said justices, with whom the third did not concur.

R. T. MERRICK,
Att'y for Def't.

And therefore the court adjourns without day.

607 Proceedings before the supreme court of the District of Columbia, sitting in general term, commencing Monday, January 1st, 1877. Present, chief justice Cartter and justices Olin, Wylie, Humphreys, and MacArthur.

SATURDAY, *January* 6, 1877.

Session resumed pursuant to adjournment. Present, chief justice Cartter and justices Olin, Wylie, Humphreys, and MacArthur.

ROBERT G. SHEDD, COMPL'T,
vs.
ALBERT ORDWAY, DEFENDANT. } In equity. No. 4092, docket 14.

The court orders that this case be reargued, and that it be placed on the calendar of the present term.

608 *Receiver Selden's report & account.—Filed Feb.* 8, 1877.

In the supreme court of the District of Columbia, the 8th day of February, 1877.

ROBERT G. SHEDD
vs.
ALBERT ORDWAY. } In equity. No. 4092.

The undersigned, who was appointed receiver in this cause under the decree passed therein on the 24th of November, 1875, respectfully submits his first account to the court in the following report:

That after having given bond as in the said decree provided, the said receiver entered upon the duties of his office, and has collected in pursuance of the said decree, inclusive of interest on U. S. bonds, together with premium thereon, the sum of $24,931.97, of which the receiver has caused to be converted into U. S. bonds the sum of $23,666.23, leaving in his hands the sum of $1,265.74, as will more fully ap-
608½ pear from the detailed account herewith filed and marked A; all of which is respectfully submitted.

JOHN SELDEN,
Receiver.

I do solemnly swear that the facts stated in the above report and the account shown in the exhibit mentioned therein are true.

JOHN SELDEN.

Subscribed and sworn to before me this 8th day of February, 1877.

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Ass't Clerk.

A.

DR. *John Selden, receiver, in account with Shedd v. Ordway. In equity. No. 4092.* CR.

1875.				
Dec'r	11.	To amount received from U. S. disbursing agent		$1,460 15
"	14.	" " " " R. T. Merrick, esq., receiver		7,268 90
1876.				
January	5.	" " " " U. S. disbursing agent		1,461 50
February	7.	" " " do		1,474 40
March	6.	" " " do		1,474 85
April	6.	" " " do		1,606 80
"	25.	" " " do		598 76
May	3.	" " " do		317 23
June	3.	" " " do		915 10
"	13.	" " " do		110 98
July	5.	" " " do		126 13
June	27.	" " " from U S Treasury, as interest on 5-20's, gold		381 00
July	7.	" " " as premium on same, @ 11 7/8		44 30
"	24.	" " " from U. S. disbursing agent		4 30
September	13.	" " " do		1,174 61
October	6.	" " " do		1,274 74
November	7.	" " " do		1,526 17
December	4.	" " " do		1,288 94
"	26.	" " " from U. S. Treasury, as interest on 5-20's, gold		534 00
1877.				
January	5.	" " " from U. S. disbursing agent		1,024 11
February	6.	" " " do		875 63
"	9.	" " " as premium on $534 gold, above		29 37
				$24,931 97

1875.						
December	16.	By purchase	$7,300	reg. 5-20 67 bonds,	@ 119 1/4 + 1/4 brokerage.	$8,723 50
1876.						
January	6.	" "	$1,200	do.	@ 119 1/4 + 1/4 brokerage.	1,434 00
February	9.	" "	$1,200	do.	@ 121 1/4 + do.	1,464 00
March	8.	" "	$1,200	do.	@ 121 1/4 + do.	1,458 00
April	8.	" "	$1,300	do.	@ 121 3/8 + do.	1,581 12
April	27.	" "	$500	do.	@ 121 1/2 + do.	608 75
June	6.	" "	$1,050	do.	@ 118 1/4 + do.	1,246 87
July	7.	" "	$550	do.	@ 119 1/4 + do.	658 62
September	15.	" "	$1,000	do.	@ 116 7/8 + do.	1,171 25
October	9.	" "	$1,000	do.	@ 115 + do.	1,152 50
November	7.	" "	$1,400	do.	@ 116 + do.	1,627 50
December	6.	" "	$1,150	do.	@ 112 1/8 + do.	1,292 30
1877.						
February	8.	" "	$1,100	do.	@ 113 3-16 + do.	1,247 82
February	"	" balance				1,265 74
						$24,931 97

610 *Motion to vacate order for rehearing.—Filed Feb.* 19, 1877.

In the supreme court of the District of Columbia, in general term, the —— day of February, 1877.

JOHN T. GODDARD, ADMINISTRATOR OF ROBERT G. Shedd, deceased,
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc.

The complainant, by his solicitor, moves the court to vacate the order passed in this cause on the sixth day of January, A. D. 1877.

611 This motion is based upon the following grounds, apparent upon the face of the record:

1. Because a final decree in favor of the complainant was made at the last term of this court, and was duly enrolled; and after the adjournment of the court sine die for that term, on the thirteenth day of December, A. D. 1876, it was out of the power of this court to vacate that decree or to treat it as vacated.

2. Because when said final decree was made the defendant, by his counsel, in open court, prayed an appeal to the Supreme Court of the United States, which appeal was by this court allowed, and the allowance of such appeal embodied in said decree before it was signed by the

612 court, whereby this cause was removed to the Supreme Court of the United States, and is still pending in that court, and this court on the sixth day of January, 1877, had no jurisdiction of the case.

3. Because the eighty-eighth equity rule of this court provides that every petition for a rehearing of a cause, after a final decree therein has been enrolled, shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person; and said rule was not complied with by the defendant in his application for a rehearing in this case.

4. Because said eighty-eighth rule further provides that "No

613 rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Supreme Court of the United States."

STANTON AND WORTHINGTON,
Solicitors for the Complainant.

Order overruling motion to vacate, &c.—Filed Feb. 19, 1877.

In the supreme court of the District of Columbia. In general term.

JOHN T. GODDARD, ADMINISTRATOR OF ROBERT G. Shedd,
vs.
ALBERT ORDWAY. } No. 4092. Eq. doc.

This cause coming on to be heard upon motion of the complainant's solicitors to vacate the order passed in the case on the 6th day of January, A. D. 1877—

Upon consideration thereof, it is this 19th day of February,

614 A. D. 1877, ordered that said motion be and it is hereby overruled.

By the court.

A. W.

Papers read March 8, 1877.

ROBERT G. SHEDD'S ADM'R, COMPL'T, *vs.* ALBERT ORDWAY, DEFENDANT. } In equity. No. 4092.

Papers read. Argument to-morrow.

Reargued & submitted March 9, 1877.

ROBERT G. SHEDD'S ADM'R, COMPL'T, *vs.* ALBERT ORDWAY, DEFENDANT. } In equity. No. 4092.

Argued by Mr. Worthington for complainant, and Mr. Merrick for defendant, in conclusion by Mr. E. L. Stanton for compl't, and submitted to court.

615 *Second report of Receiver Selden.—Filed Mar.* 27, 1877.

In the supreme court of the District of Columbia, the 27th day of March, 1877.

ROBERT G. SHEDD *v.* ALBERT ORDWAY. } In equity. No. 4092.

The undersigned respectfully reports to the court that since his last report he has collected in addition to the sum of $24,931.97, mentioned in that report, the further sum of $847.82, making a total of $25,779.79, and that in addition to the sum mentioned in that report as converted into U. S. bonds, being the sum of $23,666.23, he has since that report converted into like bonds the sum of $840.00, making
616 a total of $24,506.23, and leaving uninvested in his hands the sum of $1,273.56.

All of which is respectfully submitted.

JOHN SELDEN,
Receiver.

I do solemnly swear that the facts stated in the above report and the account therein contained are true.

JOHN SELDON.

Subscribed and sworn to before me this 27th day of March, 1877.
R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

Trial decree in gen'l term, reversing decree in special term, dismissing bill, &c., &c.—Filed Mar. 28, 1877.

In the supreme court of the District of Columbia.

ROBERT G. SHEDD, COMPLAINANT, *vs.* ALBERT ORDWAY, DEFENDANT. } No. 4092. Equity.

This caus' coming on to be further heard at the present general

617 term of the court, and being argued by counsel, it is, upon consideration thereof, ordered, adjudged, and decreed by the court, this 28th day of March, A. D. 1877, that the decree entered in the cause on the 18th day of December, A. D. 1876, be and the same is hereby rescinded and revoked; and that the decree entered in the cause by the special term of the court on the 13th day of December, A. D. 1875, be and the same is hereby reversed; and that the injunction heretofore issued in the cause be and the same is hereby dissolved; and that the complainant's bill of complaint be and the same is hereby dismissed with costs; and the receiver therein, discharged, do forthwith pass his accounts and pay over to the defendant, or his solicitor of record, all funds collected by him as such receiver, together with the securities into which the same have been converted, after retaining therefrom two and one-half per centum thereof as compensation for his
618 services. And from this decree the complainant in open court now prays an appeal to the Supreme Court of the United States, which is allowed.

By the court.

A. W.

Receiver Selden's petition.—Filed Mar. 28, 1877.

In the supreme court of District of Columbia, in general term, the 28th day of March, A. D. 1877.

ROBERT G. SHEDD
v.
ALBERT ORDWAY. } In equity. No. 4092.

The petition of John Selden, receiver in the above-entitled cause, respectfully represents that in consideration of the final decree this day passed therein and of the appeal therefrom to the Supreme Court of the United States, prayed and allowed in open court on behalf of the complainant, the said receiver is unadvised whether or not it is his duty to pay over to the defendant, or his solicitors, or to further
619 retain in his own hands the funds mentioned in the said decree, and he therefore now in open court, and for the proper protection of himself and surety, and for his proper instruction in the premises, prays the order and decree of the court thereon.

And as in duty bound, &c.

JOHN SELDEN,
Receiver.

620 *Appeal bond of complainant.—Filed Apr.* 5, 1877.

In the supreme court of the District of Columbia, the third day of April, 1877.

JOHN T. GODDARD, ADMINISTRATOR OF ROBERT G. Shedd, deceased,
vs.
ALBERT ORDWAY. } No. 4092. In equity.

Know all men by these presents that we, John T. Goddard, administrator of Robert G. Shedd, Susanna H. Phillips and John T. Goddard, are bound unto the above named Albert Ordway in the sum of fifty thousand dollars, to be paid to the said Albert Ordway, his executors or

administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated this third day of April, 1877.

Whereas the above named John T. Goddard, administrator of Robert G. Shedd, deceased, hath prosecuted an appeal to the Supreme
621 Court of the United States to reverse the decree, dated March 28, 1877, rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above named John T. Goddard, administrator as aforesaid, shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JOHN T. GODDARD, [SEAL.]
Administrator of Robert G. Shedd.
SUSANNA H. PHILLIPS. [SEAL.]
JOHN T. GODDARD. [SEAL.]

Sealed and delivered in presence of—

Approved April 5th, 1877.

ANDREW WYLIE,
Justice, &c.

Approved April 6th, 1877.

D. K. CARTTER,
Ch'f Just.

STATE OF MASSACHUSETTS,
City of :

I, hereby certify that I am the district attorney of the United States for the District of ; that I well
622 know whose genuine signatures are appended to the foregoing bond; and that they are both men of ample means, and each of them is fully responsible for the amount of the penalty of said bond.

U. S. District City *for the District of* .

I, Susanna H. Phillips, on oath say that I am the person of that name whose signature is appended to the foregoing bond; that I reside at Groton, in the State of Massachusetts; that I am the owner of property worth, over and above all my debts and liabilities, more than fifty thousand dollars; and that I am fully responsible for the amount of the obligation of said bond.

SUSANNA H. PHILLIPS.

STATE of MASSACHUSETTS,
City of Boston:

Before me, a notary public in and for said city of Boston, State
623 of Massachusetts, on the third day of April, 1877, personally appeared said Susanna H. Phillips, well known to me to be the person who executed the foregoing bond and the above affidavit, and on her oath says that the statements made in said affidavit are true.

[SEAL.] WILLIAM B. FRENCH,
Notary Public.

I, John T. Goddard, on oath say that I am the person of that name whose signature is appended to the foregoing bond; that I reside at New York, No. 1 East 44th street, in the State of New York; that I am the owner of property worth, over and above all my debts and liabilities,

more than fifty thousand dollars; and that I am fully responsible for the amount of the obligation of said bond. And I know of my own knowledge that the statements made in the above affidavit of Susanna H. Phillips are true.

JOHN T. GODDARD.

624 STATE OF DISTRICT OF COLUMBIA,
City of Washington:

Before me, a notary public in and for said District, on this 5th day of April, 1877, personally appeared John T. Goddard, well known to me to be the person who executed the foregoing bond and the above affidavit, and on his oath says that the statements made in said affidavit are true.

J. W. HAMILTON JOHNSON,
Notary Public.

624½

(Indorsed:) 4092. Eq. Doc. 14. Shedd vs. Ordway. Copy. Bond of complainant in appeal to S. C. U. S.

625 AUTHENTICATION OF RECORD.

Clerk's certificate.

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of orignals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 14th day of April, 1877.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 14th day of April, 1877.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 14th day of April, 1877.

[SEAL.]

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

(Indorsement on cover:) No. 368. John T. Goddard, adm'r of Robert G. Shedd, appellant, vs. Albert Ordway. District of Columbia, sup. c't. Filed 21st April, 1877.

ADDITION TO RECORD 137.

Stipulation of counsel & addition to record.—Filed 17th December, 1879.

Supreme Court of the United States.

JOHN G. PHILLIPS, ADM'R, &C. OF ROBERT G. Shedd, dec'd, appellant,
vs.
ALBERT ORDWAY. } No. 137.

1 These articles of agreement, made and entered into on this seventh day of August, 1871, between R. Snowden Andrews, Albert Ordway, and Sam'l S. Green, witnesseth:

1. That the said R. Snowden Andrews, Albert Ordway, and Sam'l S. Green do hereby agree to enter into a partnership to carry on the business, under the name and style of Andrews, Ordway & Green.

2. The object and purpose of this copartnership shall be the carrying on of the general granite business.

3. To the capital of the partnership the three partners agree to contribute their respective shares of the granite quarry and appurtenances known as Green's quarry, or the Westham quarry, one-third interest in which was this day conveyed by Andrews and Green to Ordway, and the sum of $8,333.33 each in cash, and all profits and losses arising from the general supply of granite by the copartnership, from this quarry or any other source, shall be shared equally. In addition to this fund, the said Ordway contributes the profits or losses of a contract just about to be executed between himself and the United States of America, for furnishing granite for building the State Department, the War Department, and the Navy Department, in the city of Washington. It is understood and agreed that the firm of Andrews, Ordway & Green shall supply all the granite, and do all the work required under said contract, participating in profits and losses thereon in the proportion of fourteen thirty-sixths to Albert Ordway, eleven thirty-sixths each to Andrews and Green, provided further, however, and it is especially understood, that so much of said contract as relates to the cutting of stone for the State Department shall inure to the benefit of Ordway alone, and that neither Andrews, Green, nor the firm of Andrews, Ordway & Green, shall have any interest, in any manner, in such cutting of stone for said State Department, but the cutting for the War and Navy Departments shall inure to the benefit of the firm.

4. It is further agreed that the firm name shall never be signed except by an attorney duly authorized by a power of attorney, duly executed by each member of the firm, which power may be general or special as the said members may elect; and in case any member of the firm shall use and sign the firm name in any manner, without such power of attorney in writing, such signature shall be considered as the individual act of the member so making it, and he shall be chargeable on the firm accounts with all the consequences of such signature.

5. It is further agreed that the work and labor of each member of the

firm shall be apportioned as follows: Green shall have charge of the quarrying of stone; Andrews shall superintend and be responsible for the conduct of the general business of the firm, and the general direction of the same, with the superintendence of the quarry and stone, the cutting of the stone, the transportation and delivery of material, having general charge of all the out-door work of the firm of every kind; Ordway shall keep the books, accounts, papers, and vouchers of the concern, acting as secretary and treasurer thereof.

6. It is further agreed that each partner shall be at liberty to draw not exceeding twenty-five hundred dollars per annum from the partnership funds, to be charged against his share of the capital or profits, it being understood that all profits from the general granite or other business done by the firm shall be shared equally, but all profits arising from the contract of Ordway, now about to be entered into with the United States, for supplying granite and labor to the State, War, and Navy Departments, shall be shared fourteen thirty-sixths to Ordway, and eleven thirty-sixths each to Green and Andrews, except the cutting of stone on the State Department proper, which inures entirely to Ordway alone.

2 7. And it is agreed that if, for any cause whatever, the United States shall rescind said contract with the said Ordway, or the said contract shall be terminated for any cause other than the fault of the said Andrews and Green before the share of net profits coming to Andrews and Green shall amount to the sum of ten thousand dollars each, then the said Ordway shall pay to said Andrews such sum as, together with his share of the net profits, shall be equal to ten thousand dollars, and to Green such sum as, with his share of the net profits, will also be equal to ten thousand dollars, and thereupon one-third interest in said quarry heretofore conveyed shall be the absolute property of Ordway; and it is further understood and agreed that, as soon as the net profits accruing to Andrews and Green out of the business of this partnership shall amount to the sum of $10,000 each, then the said one-third interest shall become the absolute property of Ordway; and it is understood and agreed that if the said contract is so terminated as aforesaid before the share of the net profits so accruing to Andrews and Green amount to $10,000 each, then Ordway is to be at liberty to make up the deficiency as aforesaid to Andrews and Green, and thereby become the absolute owner of one-third of the granite quarry and appurtenances; or, if he chooses, he shall be at liberty to decline to pay them anything, and the conditional sale of one third of the quarry to him is to be annulled and void.

It is the true intention and meaning of the parties to these articles that they estimate the granite quarry and appurtenances as worth $60,000, and that Ordway purchases one-third interest therein, to be paid for out of the shares of the profits of the firm of Andrews,

3 Ordway & Green which inure to Andrews & Green. If this contract with the State Department terminates as aforesaid before Green and Andrews receive $20,000 for one-third of the quarry, then Ordway is to pay the deficiency or the sale is to be void. If the profits do pay them the said sum of $20,000, then thereby Ordway has a right to one-third of the quarry and appurtenances, and they covenant to give him a good title thereto; and so also if Ordway makes up any deficiency between the profits received by them and the said sum of $20,000, then his title to one-third of the quarry becomes absolute.

8. And it is further agreed that any interest which any member of the partnership shall now have, or may hereafter acquire in or out of

any contract for the supply of labor or material of any kind, in the city of Washington, shall inure to the benefit of this firm, except the contract for cutting stone on the State Department, which inures to the benefit of Ordway alone.

4 9. And it is further agreed that in case of the death of any one of the partners this partnership shall be construed to continue until all contracts to which this partnership may have become parties shall have been executed and performed, and each partner shall have the right to nominate in writing a party to take his place and represent him in the firm in case of and after his death, and the party or parties so nominated shall have the same rights in the firm that their principal or principals had in their life-time. The firm shall continue under the firm-name until all contracts existing at the time of the death of any partner are completed, any party so nominated taking the place of his principal; but it is also understood and agreed that the surviving members of the firm shall have the right to designate what share of the partnership work they shall each perform and what share shall be done by the new member representing the deceased member. And in case any member dies without having nominated in writing a representative in the

5 firm as aforesaid, then and in that case such party shall be represented by his legal representative.

6 *Agreement of partnership between Albert Ordway, of Richmond, Virginia, and Andrew Washburn, of said Richmond, made November 25th*, 1871.

The said Albert Ordway and Andrew Washburn hereby agree to form a partnership for the purpose of cutting, dressing, and boxing the stone to be furnished the United States under the contract of said Ordway, dated November 16, 1871, for the new State Department at Washington, District of Columbia.

Mr. Washburn agrees with Mr. Ordway that he will furnish all capital, make all the necessary expenditures, and become responsible for and carry on all the work of cutting, dressing, and boxing said stone, including all the work, for which the United States is to pay the actual cost and 15 per cent. in addition, under said contract of November 16, 1871; all to be done to the full and complete satisfaction of the government.

In reimbursement of the capital furnished, and for the use thereof, and the responsibility assumed and services performed in carrying on the work devolving upon Mr. Washburn under this agreement, he is to receive the full amount of money paid by the government therefor under said contract of November 16, 1871, including said 15 per cent. thereon.

Mr. Ordway agrees with Mr. Washburn that he will become responsible for and reasonably quarry, and furnish for cutting, in accordance with said contract of November 16, all the stone necessary to enable Mr. Washburn to promptly prepare the same for the government in accordance with this agreement; and also to render to Mr. Wash-

7 burn his personal assistance as may be required in superintending the cutting and dressing of the stone, and performing the work.

Payments to Mr. Washburn are to be made as fast as the money is paid by the government, and Mr. Ordway agrees that if practicable such payments may be made directly by the government to Mr. Washburn, and that he will execute any powers of attorney or further agreements that may be necessary for that purpose.

In case of any failure at any time of Mr. Washburn to furnish money as needed, so that Mr. Ordway is compelled to furnish the same, Mr. Washburn is to forfeit his claim to a proportional share of the profits otherwise due him.

The balance of the money paid by the government under said contract of November 16 is to be received and retained by Mr. Ordway; and he is to have no claim upon Mr. Washburn for losses, if any there shall be, in quarrying the stone.

In case it may be advisable, for the accommodation of the workmen engaged in performing work under said contract of November 16, 1871, to establish a store for the sale of provisions, clothing, and other merchandise, the same shall be established by Mr. Ordway, and Mr. Washburn agrees that he will not claim any participation therein, nor himself establish any competing store; and that he will afford all reasonable facilities to Mr. Ordway for the collection of any store accounts against said workmen. Any buildings that may be necessary to be erected by Mr. Washburn at or near the quarries to carry out the said contract, he may remove within six months after the dissolution of this agree-

8 ment; or if Mr. Washburn so elect, Mr. Ordway agrees to purchase them upon such dissolution at prices to be fixed, if the parties do not agree, by referees, one to be selected by each party, and a third to be selected by said two referees.

Mr. Ordway agrees not to open boarding-houses for the workmen engaged in cutting or dressing the stone, and also agrees to grant, without charge, the use of all land required by Mr. Washburn for any purpose connected with the execution of this contract.

This agreement is to extend only to the workmen connected with the south wing of the State Department building, first to be erected, and not to the work for the other portions designed for the War and Navy Departments; and upon completion of the work this partnership is to be dissolved.

Signed & sealed in duplicate this 25 day of November, 1871.

ALBERT ORDWAY. [L. S.]
ANDREW WASHBURN. [L. S.]

Witness:
GEO. GRAY.
W. N. WALTON.
JAMES H. PLATT, JR.

DEPARTMENT OF STATE,
Washington, December 12, 1877.

Consent given to the foregoing.

HAMILTON FISH,
Secretary of State.

9 RICHMOND, VA., *April 1st*, 1874.

Dr. JOHN T. GODDARD:

MY DEAR SIR: I have been occupied without cessation in putting into execution the bargain I closed, which I briefly outlined to you was that business was to be incorporated, the amount put into capital stock, and the principal creditors taking full amount of what was due them in such stock—a most advantageous arrangement.

I have secured the act of incorporation from the legislature, and the matter has been organized in its new form. The numberless details accompanying such a transaction take much time. I have gotten to the point now where everything is closed out except the liquidation of the

firm matters between the partners to know what amount of interest or stock each one is entitled to, which will then be divided. This will take some little time yet—ten days or two weeks—as it involves a complete settlement of all affairs of the firm. As soon as that is accomplished I can make the propositions indicated to you of giving my obligations for indebtedness and securing said obligations by hypothecating stock that will be mine.

10 Of course I cannot put this in practical shape until I know what amount is coming to me, on the division, and I receive it. As soon as that is done you shall hear promptly from me.

Yours, truly,

(Signed) ALBERT ORDWAY.

RICHMOND, VA., *April* 11, 1874.

Dr. J. T. GODDARD:

MY DEAR SIR: Matters are progressing as fast as usual in such cases. The transfers are complete, and nothing remains now but the final dissolution of the old firm and the division of the stock between the partners. As soon as that is done I will know what my share is and what I can hypothecate to you. Will hasten as much as possible and advise you without delay.

Yours, truly,

ALBERT ORDWAY.

11 RICHMOND, VA., *April* 28, 1874.

Dr. J. T. GODDARD:

MY DEAR SIR: We have not yet reached a settlement of the affairs of our old firm. The amount of stock in new company that belongs to old firm is still in hands of trustee to determine what amount belongs to each of us, and to divide it out. I had hoped it would be finished long before now. But as it involves a complete auditing of our old books, it takes much time. I simply keep you advised that you may not think me unmindful of promises.

Yours, truly,

ALBERT ORDWAY.

RICHMOND, VA., *June* 10, 1874.

Dr. J. T. GODDARD:

Cor. 7th & Elm sts., Cincinnati, Ohio:

12 DEAR SIR: We are only slightly further advanced than when you were here, although the three weeks named have elapsed. We are ready for a settlement and division of our stock, but the trustee who was appointed by us to arbitrate between the partners and divide it is absent and will not return for ten days yet. I see no reason why, immediately on his return, he should not make the division. As promised, immediately on the division being made, and I knowing and receiving my share, I shall notify you by telegraph or otherwise.

Yours, truly

ALBERT ORDWAY.

RICHMOND, VA., *August* 21, 1874.

Dr. J. T. GODDARD:

DEAR SIR: I am glad to report at least one step further progress in the settlement of my business. We to-day finally arranged to get all

members of the firm together, and the expert who has examined
13 our books closed the accounts; all verified and correct.

Nothing remains now but for the referee we selected to divide our assets (the stock) between us. He is at the Springs, and probably will not return until middle of Sept.; but it has accomplished something towards the desired end to get our part of it finally finished.

Yours, truly,

ALBERT ORDWAY.

RICHMOND, VA., *Oct.* 14, 1874.

Dr. JOHN T. GODDARD:

DEAR SIR: Yours of the 11th rec'd. I can probably meet you about the 20th in Washington, if it is desirable. I would suggest, though, that about the 2nd prox. would probably be better, as I have earnestly urged all the parties to make a division by that time. It seems to be almost impossible to get the matter to a final settlement; one delay after another, so that I am left without the remotest idea of how my interest stands.

Yours, truly,

ALBERT ORDWAY.

14 *Contract between the United States of America and Albert Ordway.*

This contract, made and entered into this sixteenth day of November, A. D. 1871, by and between Alfred B. Mullett, Supervising Architect of the new State Department building in course of erection in Washington, D. C., for and in behalf of the United States of America, of the first part, and Albert Ordway, of the city of Richmond, State of Virginia, of the second part, to whom was awarded a contract for certain granite required for the construction of the new State Department building, on his bid, dated June 19, A. D. 1871, and received under advertisement, dated May 24, A. D. 1871, witnesseth—

That the party of the second part covenants and with the party of the first part to furnish from either or both of the quarries near the James River, in the State of Virginia, known as the James
15 River and Green or Westham quarries, at the option of the party of the first part, and deliver at the site of the aforesaid building all the granite that may be required for the exterior walls of the superstructure of the building aforesaid, the walls of the court yard alone excepted, at such times and in such quantities as may from time to time be ordered by the party of the first part, and that the granite shall be of the best quality to be obtained from the quarries aforesaid, and of uniform color, free from flaws, stains, or discoloring matter, and to the entire satisfaction of the party of the first part.

And the said party of the second part further agrees to furnish from the same quarries and at such time or times as may be ordered, and at the option of the party of the first part and on the same terms and conditions, and at the same rates and of the same kind and quality, all the granite which may be required for the exterior walls of the super-
16 structure of the entire State, War, and Navy Department building, the walls of the court yard excepted, when the construction of the same or of any additional part thereof shall be authorized.

And the party of the first part, acting for and in behalf of the United States, doth covenant and agree to pay, or cause to be paid by the United States, unto the said party of the second part, or to his heirs, executors, administrators, or assigns, in lawful money of the United

States, the sum of fifty-nine (59) cents per cubic foot for every cubic foot in stone delivered and accepted under this contract, whose quarried dimensions do not exceed twenty (20) cubic feet, with an increase in price of nine tenths ($\frac{9}{10}$) of one (1) cent per cubic foot for each additional cubic foot in stones whose dimensions exceed twenty (20) cubic feet; that is to say, stones whose dimensions are twenty-one (21) cubic feet shall be paid for at the rate of fifty-nine and nine-tenths ($59\frac{9}{10}$) cents per cubic foot; stones of twenty-two (22) cubic feet at the rate of
17 sixty and eight-tenths ($60\frac{8}{10}$) cents per cubic foot; and for stones of greater dimensions at a rate of increased price to be determined in like manner. The stones to be furnished according to schedules of net sizes to be furnished by the party of the first part, one (1) inch to be added to said schedule sizes for every worked face for quarry dimensions. Payments to be made for the granite in the following manner, viz, ninety (90) per cent., nine-tenths of the value of each schedule, to be paid on its delivery at the site of the building; and ten (10) per cent. (one tenth) thereof will be retained until the completion of the entire contract, and the approval and acceptance of the same by the party of the first part, which amounts shall be forfeited by the party of the second part in event of the non-fulfilment of this contract to the entire satisfaction of the party of the first part: provided, that no more granite than shall be required for the construction of any story shall be included in one schedule.

18 And the party of the second part hereby agrées to furnish all the labor, tools, and materials necessary to cut, dress, and box, at the quarry or quarries, all the granite aforesaid, in such manner as may be directed by the party of the first part, and also shops and sheds sufficient to accommodate one hundred granite cutters, with a proper proportion of other mechanics.

And the party of the first part, acting for and in behalf of the United States, doth covenant and agree to pay or cause to be paid unto the said party of the second part or to his heirs, executors, administrators, or assigns, in lawful money of the United States, the full cost of the said labor, tools, shops, sheds, and materials, and also the insurance on the granite increased by fifteen (15) per centum of such cost; and for the purpose of determining the amount thereof, the party of the first part shall employ such agent or agents as he may deem necessary, who shall take an account of such cost and expense, and shall for that purpose be afforded all necessary and proper facilities by the said party of the second part.

19 And the party of the second part further agrees to furnish such number of men as may be deemed necessary for the proper prosecution of the work by the party of the first part, and the party of the second part further agrees to cut as well as furnish and deliver all the granite herein contracted for, at such times as may be required by the party of the first part, and in default thereof to forfeit and pay to the United States the sum of one hundred (100) dollars per diem for each and every day thereafter until the final delivery of the same, which sum shall be deducted from any moneys which may be due him; and if that amount be not due him, then his bondsmen are to be held liable for any deficiency to be recovered of them by suit in the name of the United States.

LEASE. And the said party of the second part further covenants and agrees to and with the party of the first part, to lease and hereby does let and lease the quarries in the State of Virginia, near the James River, known as the "James River" and "Green" or

"Westham" quarries, with all and singular the tools, buildings, wharves, and appurtenances thereunto appertaining unto the said party of the first part, with the full right, authority, and power to enter upon, occupy, and use the same or procure therefrom any or all such stones as the party of the second part shall fail, omit, or decline to furnish, and said lease shall continue in full force until the final completion of the delivery of the granite required for the entire new State, War, and Navy Department building, it being understood and agreed that the object of this lease is to secure to the party of the first part a sufficient and suitable supply of granite for said building from the quarry or quarries aforesaid; and that such entry or occupancy of the said premises shall not be made by the party of the first part unless the party of the second part shall be in default, and unless the party of the first part shall give to the party of the second part eight (8) days' notice of intention to do so, said notice to be in writing, and served personally upon or left at the shop, office or usual place of abode of the said party of the second part or with his agent or agents, and in case of said default or failure to comply with the conditions of this contract, at the end of eight days the party of the first part shall enter into full and complete possession of the said quarry or quarries with their appurtenances as aforesaid, and shall work them at the expense of said party of the second part and the full expense of said working and procuring the stone and of boxing, shipping, and delivering the same at the site of the building aforesaid shall, after deducting the value of the granite as hereinbefore agreed, be increased by fifteen (15) per centum, which amount shall be deducted from any money or moneys that may be due said party of the second part, and if that amount be not due him then his sureties are to be held liable for any deficiency to be recovered from them by suit in the name of the United States. In the event of any such entry, occupancy, or use under this contract and lease, the quarry or quarries shall be worked by the party of the first part or under his direction, in such workmanlike manner as not unnecessarily to injure the same, and the appurtenances shall be kept in good repair, usual wear and tear excepted. And the premises and appurtenances shall be duly released and restored to the party of the second part, or his legal representatives, without unnecessary delay, whenever the purpose of this lease, as herein declared, shall have been accomplished.

It is further agreed between the parties to this contract that the party of the second part shall execute with two or more good and sufficient sureties a bond to the United States in the sum of fifty thousand dollars ($50,000), conditioned for the faithful performance of this contract and the agreements and covenants herein made by said party of the second part.

It is also covenanted and understood that no member of Congress or other person whose name is not at this time disclosed shall be admitted to any interest in this contract; and it is further covenanted and agreed that this contract shall not be assigned except by consent of the Secretary of State, and that any assignment thereof except as aforesaid will be a forfeiture of the same. It is further covenanted and agreed by and between the parties hereto that this contract shall be valid and binding when approved by the Secretary of State, and not otherwise, and that no departure from its conditions shall be made without his written consent.

In witness whereof the parties hereto have hereunto subscribed their names and affixed their seals the day and year first above written.

A. B. MULLET, [SEAL.]
Supervising Architect.

Witnesses to signature of supervising architect—
L. E. GANNON.
J. C. RANKIN.

24, 25 ALBER ORDWAY, [SEAL.]
Contractor.

Witnesses to signature of the contractor—
L. E. GANNON.
J. C. RANKIN.

26 Whereas, by articles of agreement bearing date the 16th of November, 1871, between the United States of America of the first part and Albert Ordway, of Richmond, Virginia, of the second part, the said Ordway contracted to furnish granite for the exterior walls of the new State Department building, the walls of the court-yard alone excepted;

And whereas further in said articles of agreement the said Ordway, party of the second part, agreed to furnish from the same quarries and at such time or times as may be ordered, at *at* the option of the party of the first part, and on the same terms and conditions, and at the same rates, and of the same kind and quality, all the granite which may be required for the exterior walls of the superstructure of the entire State, War, and Navy Department building, the walls of the court-yard alone excepted, when the construction of the same, or any additional part thereof, shall be authorized:

27 Now, in pursuance of the last-named stipulation, the party of the first part, by Alfred B. Mullett, supervising architect of the new State, War, and Navy Department building, hereby orders, and the said Albert Ordway, party of the second part, hereby agrees to furnish on the said orders the granite necessary for the construction of the exterior walls of the superstructure of the east wing of the said State, War, and Navy Department building, the walls of the court-yard alone excepted, the granite under this order to be of the same kind and quality and subject to all the conditions named and set out in the said contract of the 16th of November, 1871, for the furnishing of the granite already delivered for the south wing; provided however, that the granite furnished by the party of the second part under this order is not to

28 exceed, in cost, such proportion of the appropriation made by the act of Congress of June, 23d, 1874, for continuation of construction for the building of the State, War, and Navy Department as may be applied to that purpose, such proportion to be determined by the supervising architect under the direction of the Secretary of State.

In witness whereof said parties have hereunto subscribed their names and affixed their seals this 26th of July, A. D. 1874.

(Signed) A. B. MULLETT, [SEAL.]
Supervising Architect.
ALBERT ORDWAY. [SEAL.]

Witnesses to signature of both parties, Supervising Architect and contractor:

(S'd) HENRY O'CONNOR.
(S'd) C. H. PARSONS.

Approved.
(S'gn'd) HAMILTON FISH,
Secretary of State.

JULY 28*th*, 1874.

29 *Copy of paper attached to original contract by the State Department.*

I, Andrew Washburn, of the city of Richmond, State of Virginia, do hereby consent and agree to all the provisions and agreements made in the within contract by Albert Ordway, the party of the second part, so far as the construction of the new State Department building is concerned, meaning thereby to bind myself, as his general partner, to all his covenants and agreements herein contained, so far as the construction of the new State Department building is concerned, as fully and entirely as if I myself had signed the same as the party of the second part; and I do so consent and agree, for other good and valuable considerations, and in consideration that the Secretary of State does consent that the aforesaid Albert Ordway may assign to me an interest in the within contract. But it is understood that hereby I in no way
30 change or modify my obilgations to and with the said Albert Ordway under the agreement or assignment to which the Secretary of State does consent, as above stated.

Washington, December 12, 1871.
(Signed) ANDREW WASHBURN.

Witnesses:
(Signed) CHAS. C. BEAMAN, JR.
(Signed) JOHN J. CHEW.

31 RICHMOND, VA., *Dec.* 21*st*, 1874.

Messrs. STANTON & WORTHINGTON:

GENTLEMEN: My bond to Mr. Shedd is that I am to pay him a certain proportion of profits derived by me from my business until the debt is extinguished.

I have delayed coming over see you as the amount of my profits in the business is in process of settlement, and looks as though would be determined and divided in a very short time—I hope within the next ten days. That will determine my status in the matter, and being determined, I propose at once to call upon you and transfer to you the proportion of profits my bond calls for, and see how I stand in regard to the balance.

Yours, truly,

ALBERT ORDWAY.

32 *Balance sheet of Andrews, Ordway and Green, Aug. 20th, 1874.*

	Trial balance.		Representative—		Real—	
	Dr.	Cr.	Loss.	Gain.	Resources.	Liabilities.
Stock		60,000 00				60,000 00
Green & Andrews		446 14				446 14
W. G. Co. stock	147,000 00				147,000 00	
J. Condit Smith		34 45				34 45
R. S. Andrews	87 71	3,997 09				3,909 38
" " (loan)		9,677 98				9,677 98
S. S. Green	3,073 06	27 75			3,045 31	
Albert Ordway	161 38	191 66				30 28
A. S. Andrews	59 64	53 39			6 25	
Jas. Sweeney	87 00	50 00			37 00	
W. G. Co	2,593 19	2,339 13			184 06	
Bills pay	9,027 43	26,239 19				17,211 76
Profit & loss	9,098 90	64,009 50		54,910 60		
U. S	36 99	3,042 14				3,005 15
W. A. Contin's		600 00				600 00
J. R. Bridge Co		995 94				995 94
A. O., profit %	634 51				634 51	
Contingencies	203 05	400 00				196 95
Granite B. Club	711 50				111 60	
	172,104 36	172,104 36				
	To bal. profit & loss....		54,910 60			
			54,910 60	54,910 60		
				Profit.....		54,910 60
					151,018 63	151,018 63

33 Sup. Ct. U. S.

JOHN G. PHILLIPS, ADM'R OF SHEDD,
vs.
ALBERT ORDWAY. } No. 137.

It is hereby agreed that the foregoing papers are part of the record in the above-entitled cause, and shall be printed as such and used at the hearing in the same manner as though they had been contained in the transcript originally sent up and filed.

R. Z. WORTHINGTON,
For Appellant.
R. T. MERRICK,
For Def't in Error.

C

Supreme Court of the United States.

JOHN T. GODDARD, Administrator of ROBERT G. SHEDD, deceased, APPELLANT,

vs.

ALBERT ORDWAY.

STATEMENT.

In August, 1871, the defendant, Albert Ordway, appellee here, obtained a contract from the Government to furnish the granite for the new State Department building. The contract was signed November 16, 1871. The mode of payment on this contract, which is somewhat peculiar, is set forth in a copy of portions of it, hereafter subjoined, marked "Exhibit A."

Prior to this, and in anticipation of the contract, Ordway had, on August 7, 1871, entered into a partnership with Andrews & Green, owners of the Westham Granite Quarry, near Richmond, Virginia, to furnish the granite required for the purpose. The firm of Andrews, Ordway & Green, so constituted, undertook the execution of the contract; but becoming embarrassed, in 1873 was merged in the Westham Granite Company, which is now performing the work. The articles of co-partnership between Andrews, Ordway & Green, are subjoined, marked "Exhibit B." From them, it appears that Ordway's interest in the firm was fourteen thirty-sixths, ($\frac{14}{36}$,) though he afterwards became largely indebted to the firm, and his interest was really much less.

In June, 1872, Ordway being individually indebted to the complainant Shedd, in the sum of $38,500, without the knowledge of his partners entered into an agreement with Shedd to pay him, in gradual liquidation of the claim, three-eighths ($\frac{3}{8}$) of the profits that might accrue to him under the contract, according as those profits should be divided between the members of the firm of Andrews, Ordway & Green. A copy of this agreement is hereto subjoined, marked " Exhibit C."

Upon the alleged failure of Ordway to fulfil this agreement with Shedd, and to account to the latter for alleged profits received, Shedd filed his bill in this cause; a temporary injunction was granted, and a receiver was appointed to receive from the Government the fifteen (15) per centum mentioned in the contract and claimed to be profits. The injunction was subsequently modified so far as to limit the receiver to the collection of three-eighths ($\frac{3}{8}$) of the fifteen per centum, according as it became due from the Government.

All this appears in the record of the case. Now, it is plain that, if Shedd is entitled to anything at all before the settlement of the partnership affairs of Andrews, Ordway & Green, it is only to $\frac{3}{8}$th of $\frac{14}{36}$th of fifteen per centum of the money paid or payable on account of the contract with the Government. Instead of that, however, the receiver has been collecting, and now holds $\frac{3}{8}$ths of the fifteen per centum, or $\frac{3}{8}$ths of the presumed profits of all the partners, instead of $\frac{3}{8}$ths of the profits of Ordway alone. The receiver now holds about $25,000, of which, at the utmost, only the $\frac{14}{36}$th part is liable to Shedd's claim. The balance should be paid over to those entitled to it.

As a matter of fact, however, as is shown by the record, the partnership affairs of Andrews, Ordway & Green have never been settled; there has never been any division of profits; there have never been any profits to divide; and the business has been conducted at an actual loss.

As a matter of law, it is suggested that the agreement between Shedd and Ordway, under the construction given to it on behalf of the complainant to support the injunction, would be null and void under the act of Congress of February 26, 1853, (10 Statutes, p. 170; Revised Statutes, sec. 3,477.) And it is submitted, also, that this attempt to take the money of Andrews, Ordway & Green, to pay Shedd, without making Andrews and Green parties to the proceedings, is not justifiable by any rule of law.

EXHIBIT "A."

"And the party of the first part, acting for and in behalf of the United States, doth covenant and agree to pay, or cause to be paid, by the United States, unto the said party of the second part, or to his heirs, executors, administrators, or assigns, in lawful money of the United States, the sum of fifty-nine (59) cents per cubic foot for every cubic foot in stones delivered and accepted under this contract whose quarried dimensions do not exceed twenty (20) cubic feet, with an increase in price of nine-tenths of one cent per cubic foot for each additional cubic foot in stones whose dimensions exceed twenty (20) cubic feet. * * * * * The stones to be furnished according to the schedules of net sizes to be furnished by the party of the first part, one inch to be added to said schedule sizes for every worked face for quarry dimensions. Payments to be made for the granite in the following manner, viz: Ninety (90) per cent., nine-tenths of the value of each schedule, to be paid on its delivery at the site of the building, and ten (10) per cent., (one-tenth) thereof will be retained until the completion of the entire contract, and the approval and acceptance of the same by the party of the first part, which amounts shall be forfeited by the party of the second part in the event of the non-fulfillment of this contract to the entire satisfaction of the party of the first part: *Provided*, That no more granite than shall be required for the construction of any story shall be included in one schedule.

"The party of the second part hereby agrees to furnish all the labor, tools, and materials necessary to cut, dress, and box at the quarry or quarries all the granite aforesaid in such manner as may be directed by the party of the first

part, and also shops and sheds sufficient to accommodate one hundred granite cutters, with a proper proportion of other mechanics.

"And the party of the first part, acting for and in behalf of the United States, doth covenant and agree to pay, or cause to be paid, unto the said party of the second part, or to his heirs, executors, administrators, or assigns, in lawful money of the United States, the full cost of the said labor, tools, shops, sheds, and materials, and also the insurance on the granite, increased by fifteen (15) per centum of such cost; and for the purpose of determining the amount thereof, the party of the first part shall employ such agent or agents as he may deem necessary, who shall take an account of such cost and expense, and shall for that purpose be afforded all necessary and proper facilities by the said party of the second part. * * * * * *

EXHIBIT "B."

"These articles of agreement, made and entered into on this seventh day of August, 1871, between R. Snowden Andrews, Albert Ordway, and Sam'l S. Green, witnesseth:

"1. That the said R. Snowden Andrews, Albert Ordway, and Sam'l S. Green, do hereby agree to enter into a partnership to carry on the business, under the name and style of Andrews, Ordway & Green.

"2. The object and purpose of this copartnership shall be the carrying on of the general granite business.

"3. To the capital of the partnership the three partners agree to contribute their respective shares of the granite quarry and appurtenances known as Green's quarry, or the Westham quarry, one-third interest in which was this day conveyed by Andrews and Green to Ordway, and the sum of $8,333.33 each in cash, and all profits and losses arising from the general supply of granite, by the copartnership, from this quarry or any other source shall be shared equally. In addition to this fund, the said Ordway contributes the profits or losses of a contract just about to be executed between himself and the United States of America, for furnishing granite for building the State Department, the War Department, and the Navy Department, in the city of Washington. It is understood and agreed that the firm of

Andrews, Ordway & Green shall supply all the granite, and do all the work required under said contract, participating in profits and losses thereon, in the proportion of fourteen thirty-sixths to Albert Ordway, eleven thirty-sixths each to Andrews and Green, provided further, however and it is especially understood, that so much of said contract as relates to the cutting of stone for the State Department shall inure to the benefit of Ordway alone, and that neither Andrews, Green, nor the firm of Andrews, Ordway & Green, shall have any interest, in any manner, in such cutting of stone for said State Department, but the cutting for the War and Navy Departments shall inure to the benefit of the firm.

"4. It is further agreed that the firm name shall never be signed except by an attorney duly authorized by a power of attorney, duly executed by each member of the firm, which power may be general or special as the said members may elect; and in case any member of the firm shall use and sign the firm name in any manner without such power of attorney in writing such signature shall be considered as the individual act of the member so making it, and he shall be chargeable on the firm accounts with all the consequences of such signature.

"5. It is further agreed that the work and labor of each member of the firm shall be apportioned as follows: Green shall have charge of the quarrying of stone; Andrews shall superintend, and be responsible for the conduct of the general business of the firm, and the general direction of the same, with the superintendence of the quarry and stone, the cutting of the stone, the transportation and delivery of material, having general charge of all the out-door work of the firm of every kind. Ordway shall keep the books, accounts, papers, and vouchers of the concern, acting as secretary and treasurer thereof.

"6. It is further agreed that each partner shall be at liberty to draw not exceeding twenty-five hundred dollars per annum from the partnership funds, to be charged against his share of the capital or profits, it being understood that all profits from the general, granite, or other business done by the firm, shall be shared equally, but all profits arising from the contract of Ordway, now about to be entered into with the United States, for supplying granite and labor to the State, War, and Navy Departments, shall be shared

fourteen thirty-sixths to Ordway, and eleven thirty-sixths each to Green and Andrews, except the cutting of stone on the State Department proper, which inures entirely to Ordway alone.

"7. And it is agreed that if, for any cause whatever, the United States shall rescind said contract with the said Ordway, or the said contract shall be terminated for any cause other than the fault of the said Andrews and Green, before the share of net profits coming to Andrews and Green shall amount to the sum of ten thousand dollars each, then the said Ordway shall pay to the said Andrews such sum as, together with his share of the net profits, shall be equal to ten thousand dollars, and to Green such sum as, with his share of the net profits, will also be equal to ten thousand dollars, and thereupon one-third interest in said quarry heretofore conveyed shall be the absolute property of Ordway; and it is further understood and agreed that, as soon as the net profits accruing to Andrews and Green out of the business of this partnership shall amount to the sum of $10,000 each, then the said one-third interest shall become the absolute property of Ordway; and it is understood and agreed that if the said contract is so terminated as aforesaid before the share of the net profits so accruing to Andrews and Green amount to $10,000 each, then Ordway is to be at liberty to make up the deficiency as aforesaid to Andrews & Green, and thereby become the absolute owner of one-third of the granite quarry and appurtenances, or, if he chooses, he shall be at liberty to decline to pay them anything, and the conditional sale of one-third of the quarry to him is to be annulled and void.

"It is the true intention and meaning of the parties to these articles that they estimate the granite quarry and appurtnances as worth $60,000, and that Ordway purchases one third interest therein, to be paid for out of the shares of the profits of the firm of Andrews, Ordway & Green which inure Andrews & Green. If this contract with the State Department terminates as aforesaid before Green and Andrews receive $20,000 for one-third of the quarry, then Ordway is to pay the deficiency or the sale is to be void. If the profits do pay them the said sum of $20,000, then thereby Ordway has a right to one-third of the quarry and appurtenances, and they covenant to give him a good title thereto; and so also if Ordway makes up any deficiency

between the profits received by them and the said sum of $20,000, then his title to one-third of the quarry becomes absolute.

"8. And it is further agreed that any interest which any member of the partnership shall now have, or may hereafter acquire in or out of any contract for the supply of labor or material of any kind, in the city of Washington, shall inure to the benefit of this firm, except the contract for cutting stone on the State Department, which inures to the benefit of Ordway alone.

"9. * * * *."

EXHIBIT "C."

"Memorandum of an agreement entered into this first day of January, A. D. 1872, by and between Albert Ordway, of Richmond, Virginia, of the first part, and R. G. Shedd, of Groton, Middlesex county, Massachusetts, of the second part, witnesseth:

"That whereas the said Ordway is now liable to the said Shedd, by reason of certain promissory notes signed and given by Ordway and others for certain moneys invested by the said Shedd, as trustee of C. A. Shedd, H. E. Phillips, and J. G. Phillips, amounting in the whole to the sum of thirty-eight thousand and five hundred dollars ($38,500;) and whereas the said Ordway has entered into a contract with the United States for furnishing and cutting the granite for building the State, Army, and Navy Department buildings at Washington, D. C., and is now filling said contract as rapidly as he can under Government supervision, said contract being filled and performed with others, and especially with the firm of Andrews, Ordway & Green, of which said firm said Ordway is copartner.

"Now, therefore, in consideration of the benefits accruing from said investment, viz: the sum of thirty-eight thousand and five hundred dollars ($38,500) above named, and of the mutual agreements hereinafter made, the said Ordway, of the first part, hereby covenants, agrees for himself, his heirs, assigns, legal representatives, and appointees, and is hereby held and firmly bound unto the said Shedd, of the second part, as trustee aforesaid, in the full and just sum of fifty thousand dollars, ($50,000,) in default of each or any of the covenants, agreements, or

contracts hereinafter made or intended to be made. And the said Ordway hereby conveys to the said Shedd three-eights (3/8) of the entire profits that shall accrue to him, the said Ordway, in carrying out and filling said contract with the said United States Government, or in which he may be interested in carrying out, absolutely, and without any reservation in law or equity, designing and intending hereby to transfer as a lien, waiving all exceptions, and hereby confess judgment for the said amount of $38,500 in and to the said Ordway's right and interest in the said contract and to three-eighths (3/8) of the profits that accrue to the said Ordway either individually or as a partner in the firm of 'Andrews, Ordway & Green.'

"Intending hereby, from the income and profits of said Government contract, to amply, fully, and finally secure said Shedd as said trustee from any and all loss by reason of his said loan of ($38,500) thirty-eight thousand and five hundred dollars.

"And the said Ordway further covenants and agrees that the said Shedd, or his legal representatives and attorney, shall well and truly know and be informed, by charges, credits, vouchers, and statements in writing, of the amounts received by said Ordway as his share of the profits in said Government contract: and the said Ordway covenants and agrees to procure the consent of said co-partners to so much of said contract as affects their interests in writing, and also procure and exhibit to the said Shedd the certificates of the other partners of said firm of the amounts drawn and received by the said Ordway as profits and income from said Government contract. That the said Shedd, or his legal representatives, shall at all times have access to the books of the said firm and of the said Ordway relating to Government contract.

"Intending hereby to include all the said profits and incomes of the said Ordway to the amount of (3/8) three-eighths thereof individually, and as one of the firm of Andrews, Ordway & Green, embracing all profits for furnishing and cutting granite for the said buildings, furnishing hands employed with stores, and any and all commissions from the Government, whether in purchase or sale of tools, materials, or all, or any other *profits* as they accrue, until the final payment of the sum of ($38,500) thirty-eight thousand and five hundred dollars, and interest at seven per centum

per annum, to be reckoned and charged from the 30th day of September, 1871; and that he will make any and all of said payments as they accrue to him and are payable to him from the United States Government, and at such times as they are divided to the said firm of Andrews, Ordway & Green.

"And in default of any one of said payments then the whole amount shall be due and payable at once; and the said Ordway further covenants and agrees that the said Shedd shall hold the said several notes made by him and others, as aforesaid, for the said sum of ($38,500) thirty-eight thousand and five hundred dollars, as a further security for the fulfillment and performance of this said bond and agreement, and that anything hereby done or agreed to be done shall in no way release the said co-promisors on said notes, until their final payment, or they become extinct and void by the payment of this bond.

"And the said Shedd agrees to receive said profits as they accrue aforesaid; and as a further consideration to return to said Ordway five hundred shares (500) of James River Granite stock, whose par value is (50,000) fifty thousand dollars, and out of the first amount paid by said Ordway to appropriate and apply said payment towards the extinguishment of his individual note of ($5,231.42) five thousand two hundred and thirty-one $\frac{42}{100}$ dollars, which is a renewal note and forms part of the said ($38,500) thirty-eight thousand and five hundred dollars.

"In witness whereof the said Ordway, designing to sign this as in the nature of a bond, with the penalty attached, has hereunto set his hand and seal, and the said Shedd in token of his consent thereto and acceptance of said bond, with penalty, has also affixed his signature and seal to the same.

ALBERT ORDWAY, [SEAL.]
ROBERT G. SHEDD. [SEAL.]

Witness:
W. C. GRADY."

R. T. MERRICK;
Solicitor and of Counsel for Albert Ordway.